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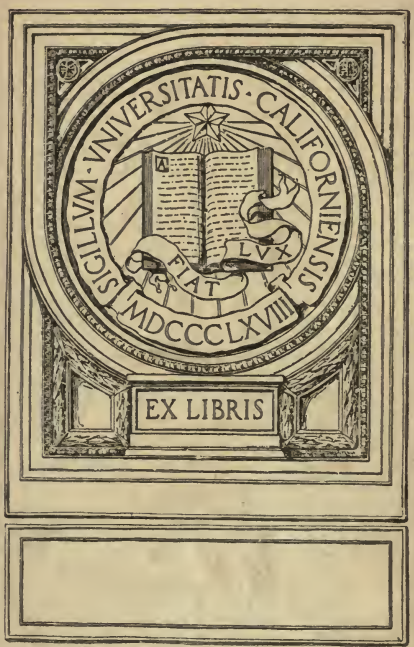

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PREFACE TO THE TENTH EDITION.

Since the last edition of this book was published in 1903 a number of Acts of Parliament relating to the powers and duties of Municipal Corporations have been passed, the most important of which are the Borough Funds Act, 1903, the four amending Education Acts, and the three Acts relating to Police Superannuation. Seventeen new Acts are included in the present edition, which also contains notes of nearly 150 new cases, most of which have been decided since 1902. The cases have been noted up to the beginning of May, 1910.

In the present edition we have for the first time included notes relating to County Councils. A large portion of the Municipal Corporations Act, 1882, was made applicable to County Councils by the Local Government Act, 1888. Notes have now been inserted throughout the book explaining the application to County Councils of these incorporated provisions, with the modifications introduced by the Act of 1888 and by subsequent enactments. The provisions of the Local Government Act, 1888, relating to the constitution and election of County Councils have also been included, together with the County Electors Act, 1888, and the County Councils Elections Acts, 1891 and 1900, which have been fully noted. We hope that this innovation, which has involved a large amount of additional labour as well as extra space, will materially increase the usefulness of the book to practitioners and to the members and officers of County Councils.

The Editors have pleasure in acknowledging their indebtedness to Mr. G. I. Simey, Clerk of the Peace and of the County Council of Somerset, and to Mr. F. D. Wardle, Town Clerk of Bath, for much valuable information with respect to the proceedings of County and Borough Councils and for many useful suggestions.

J. F. P. R.
J. A. J.

Inner Temple,
May, 1910.

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PREFACE TO THE NINTH EDITION.

The First Edition of this book was published in 1842, shortly after the passing of the Municipal Corporations Act, 1835. The Eighth Edition, which was rendered necessary by the passing of the consolidating Municipal Corporations Act, 1882, was published in October, 1883, and was followed twelve months later by a supplement containing the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and several other statutes.

Since 1884 the powers and duties of municipal corporations have been largely modified and extended by legislation (including some twenty-seven new statutes dealt with in this edition), and the decisions, both under the earlier Acts and under the subsequent legislation, have been very numerous. Consequently it has been found necessary to re-write the whole of the notes contained in the last edition. It is believed, however, that all that remains of value in the notes to the earlier editions has been retained.

The book is now divided into two Parts, the first of which is confined to the three statutes which bear the title of Municipal Corporations Acts. The Second Part contains enactments relating to the powers and duties of municipal corporations under those Acts, as distinguished from their functions as urban authorities under the Acts relating to Public Health, which are beyond the scope of this book. The Education Act of last session is printed at length, but the notes are limited to those of its provisions which relate to local government. For the powers and duties of a borough council acting as a local education authority under that Act, reference should be made to text-books on the subject of education.

A chronological Table of Statutes has for the first time been inserted and the cases have been noted up to the end of 1902. It is hoped that the Index will be found a sufficient guide to the numerous subjects that are contained in the volume.

J. F. P. R.
J. A. J.

Inner Temple,
January, 1903.

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THE

MUNICIPAL CORPORATIONS ACTS.

PART I.

THE MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 Vict. c. 50.)

An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales.

[18th August, 1882.]

Whereas divers bodies corporate at sundry times have been constituted in the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed:

And whereas the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of Municipal Corporations in England and Wales," applies to most of those bodies constituted before the passing of that Act, and to every of those bodies constituted after the passing of that Act; and that Act having been from time to time much altered and added to by other Acts, it is expedient that all the Acts aforesaid be reduced into one Act with some amendments:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

As to the proper mode of construing a consolidating Act, see the judgment of Lord Herschell in *Bank of England* v. *Vagliano Brothers*, [1891] A. C. 107; 60 L. J. Q. B. 145; 64 L. T. 353; 39 W. R. 657; 55 J. P. 676; 7 T. L. R. 333; and with regard to the construction of this Act, see *Marsh* v. *Estcourt*, (1889) 24 Q. B. D. 147; 59 L. J. Q. B. 100; 38 W. R. 495; 54 J. P. 294; Fox & Smith 157.

PART I.

Preliminary.

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1882.

Division of Act into Parts.

2. This Act is divided into Parts, as follows:

Part I.—Preliminary.

Part II.—Constitution and government of borough.

Part I. Section 2.

PART III.—Preparations for and procedure at elections.
PART IV.—Corrupt practices and election petitions.
PART V.—Corporate property and liabilities.
PART VI.—Charitable and other trusts and powers.
PART VII.—Borough fund: borough rate: county rate.
PART VIII.—Administration of justice.
PART IX.—Police.
PART X.—Freemen.
PART XI.—Grant of charters.
PART XII.—Legal proceedings.
PART XIII.—General.

The sections comprised in the various Parts are as follows:

Part I. ss. 1–7.
Part II. ss. 8–43.
Part III. ss. 44–76.
Part IV. ss. 77–104.
Part V. ss. 105–132.
Part VI. ss. 133–138.
Part VII. ss. 139–153.
Part VIII. ss. 154–189.
Part IX. ss. 190–200.
Part X. ss. 201–209.
Part XI. ss. 210–218.
Part XII. ss. 219–227.
Part XIII. ss. 228–260.

There are also nine schedules to the Act, the contents of which are as follows:—

Schedule I. Enactments Repealed.
Schedule II. Meetings and Proceedings of Council.
Schedule III. Elections.
Schedule IV. Fees and Remuneration.
Schedule V. Payments out of the Borough Fund.
Schedule VI. Counties to which certain Boroughs are to be considered adjoining for purposes of Criminal Trials.
Schedule VII. Procedure for Scheme on Grant of New Charter.
Schedule VIII. Forms.
Schedule IX. Enactments in which a reference to this Act is to be substituted.

County Councils.—The following portions of this Act have been made applicable to county councils with certain limitations and with the necessary modifications by s. 75 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, p. 445:

Part II, Part III, Part IV (as amended by the Municipal Elections (Corrupt Practices) Act, 1884), section 124 in Part V, Part XII, Part XIII, Schedule II, Part 2 and Part 3 of Schedule III, and Part 1 of Schedule VIII. See the note at the head of each Part of the Act as to its application to county councils.

The provisions relating to elections have been altered by the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), *post*, p. 512.

In the application of this Act to county councils, "county" is to be substituted for "borough," "electoral division" for "ward," and "county elector" for "burgess." References to the mayor and the town clerk are as a rule to be read as referring respectively to the chairman and the clerk of the county council. For an exception to this rule, see the note to s. 53, *post*.

Extent.

3. This Act shall not extend to Scotland or Ireland.

Commencement.

4. This Act shall commence and have effect from and immediately after the thirty-first of December one thousand eight hundred and eighty-two.

Repeals.

5. The enactments described in the First Schedule are hereby repealed, subject to the exceptions and qualifications in this Act mentioned.

Application.

6. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are

incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporation Acts are under this Act extended by charter, but to no other place.

The Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), applied only to those corporations that were enumerated in Schedules A. and B. to that Act, *post*, pp. 213, 214. A Royal Commission, appointed in 1834, had reported that there were 246 municipal corporations in England and Wales (including the City of London), most of which claimed to act under charters granted by the Crown at various dates extending from the reign of Edward I. to that of George IV., especially during the reigns of Elizabeth, James I., Charles I., and Charles II. In seventeen cases the rights claimed were based upon prescriptive custom (see the Report of the Commissioners, Parliamentary Papers, vol. 441). The Act of 1835 was the first attempt to introduce a uniform system of government for such of the then existing corporations as possessed a distinctly municipal character. The provisions of that Act were subsequently extended to a number of other towns in the manner provided by s. 141 of the Act.

In 1876 a Royal Commission was appointed to inquire into the municipal corporations in England and Wales (other than the City of London) which were not subject to the Act of 1835, and to report in what manner it was expedient that Parliament should deal with such corporations. The Commissioners reported in 1880 (Parliamentary Papers, 1880, vol. 31) that they had inquired into 110 places, twenty-two of which appeared to them never to have been municipal or to have long since ceased to be such, while ten others had virtually become extinct since 1835. A list of these places will be found in the 2nd schedule to the Municipal Corporations Act, 1883, *post*, p. 208. The majority of these places produced charters, but some existed only by prescription. The Commissioners recommended that twenty-five boroughs should be placed in the position of the boroughs included in Schedule B. to the Act of 1835, and that the remainder, being unfit by reason of the smallness of their population and corporate property and the nature of the duties then performed by their corporations to retain municipal functions, should for all purposes become part of the counties in which they were situate. These recommendations were subsequently carried into effect by s. 3 of the Municipal Corporations Act, 1883, *post*, p. 194, which provided that the places mentioned in the schedules to that Act should cease to be corporate towns or boroughs, and that their municipal or other corporations should be dissolved, unless a new charter should be granted to them by the Crown, and directed that inquiry should be made by the Privy Council into the expediency of advising her Majesty to grant a charter to the places included in the first part of the first schedule to the Act, being the places to which the Commissioners of 1876 considered that the Municipal Corporations Acts might be applied. The effect of this provision was to weed out some forty or fifty decayed boroughs.

Section 210, *post*, empowers the King by the advice of his Privy Council to create any town, towns, or district in England a municipal borough, and to incorporate the inhabitants and to extend to them the provisions of the Municipal Corporations Acts. The procedure to be followed on an application for the grant of a charter is prescribed by ss. 211—218, *post*.

Generally speaking, the provisions of the Municipal Corporations Acts do not apply to the councils of metropolitan boroughs which were created by the London Government Act, 1899 (62 & 63 Vict. c. 14). By s. 31 (1) of that Act, expressions in any earlier Act referring to a borough are not to be construed as referring to a metropolitan borough unless applied thereto by or under the provisions of that Act or of any subsequent enactment. Certain provisions of the Municipal Corporations Acts are incorporated by that Act, but this is only done indirectly by reference to the Local Government Acts, 1888 and 1894, in which they were already incorporated subject to certain modifications. The City of London is not affected by any of the Acts above referred to.

7.—(1.) In this Act—

Interpretation and construction.

"Borough" means, unless a contrary intention appears, a city or town to which this Act applies:

In every Act passed after the Interpretation Act, 1889, the expression "borough" when used in relation to local government is defined by s. 15 of that Act, *post*, p. 478,

Part I. Section 7.

as meaning any place for the time being subject to the Municipal Corporations Act, 1882.

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

The following are the principal amending Acts: The Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), *post*, p. 193; the Borough Constables Act, 1883 (46 & 47 Vict. c. 44), *post*, p. 352; the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), *post*, p. 377; The Municipal Voters Relief Act, 1885 (48 & 49 Vict. c. 9), *post*, p. 10; the Honorary Freedom of Boroughs Act, 1885 (48 & 49 Vict. c. 29), *post*, p. 407; the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, p. 416; the Municipal Corporations Act, 1893 (56 & 57 Vict. c. 9), *post*, p. 209; the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 544; and the Municipal Corporations Amendment Act, 1906 (6 Edw. 7, c. 12), *post*, p. 210.

"Burgess" includes citizen:

In an interpretation section the term "means" has an exhaustive signification, whereas "includes" is used by way of extension and not of definition. *Reg.* v. *Kershaw* (1856), 6 E. & B. 999; 26 L. J. M. C. 23; 5 W. R. 53; 20 J. P. 741, per Erle, J.

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor, elective auditor, or revising assessor:

The office of revising assessor is now abolished. See the note to s. 29, *post*.

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

See also the definition of this expression in s. 15 of the Interpretation Act, 1889, *post*, p. 478. As to a county of a city or county of a town, see the note to s. 170, *post*.

"Parliamentary election" means an election of a member to serve in Parliament:

See also the definition of this expression in s. 17 of the Interpretation Act, 1889, *post*, p. 479.

"Parish" means any place for which a separate poor rate is or can be made:

This definition is not so wide as that which is contained in s. 5 of the Interpretation Act, 1889, *post*, p. 477.

"Overseers" means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers;

" County " does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county :

See also the definition of this expression in s. 4 of the Interpretation Act, 1889, *post*, p. 477.

" Trustees " means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated :

" Person " includes a body of persons corporate or unincorporate :

A similar definition of this expression is contained in s. 19 of the Interpretation Act, 1889, *post*, p. 479.

" Treasury " means the Commissioners of Her Majesty's Treasury :

" The Secretary of State " means one of Her Majesty's Principal Secretaries of State :

" High Court " means Her Majesty's High Court of Justice :

" Justice " means one of Her Majesty's justices of the peace :

" Borough civil court " means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court :

" Bank of England " means the Governor and Company of the Bank of England.

" Schedule " means schedule to this Act, and " Part " means Part of this Act :

" Writing " includes print, and " written " includes printed.

Expressions in this Act referring to writing are to be construed, unless the contrary intention appears, as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form. Interpretation Act, 1889, s. 20, *post*, p. 479.

(2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

PART II.

Constitution and Government of Borough.

[This Part (ss. 8–43), with the exception of ss. 15 (5), 16, 17, and 18, and of the provisions relating to the alteration of wards (s. 30), and to borough auditors (ss. 25 and 27), is made applicable to county councils by s. 75 of the Local Government Act, 1888.]

Corporate Name.

Name of municipal corporation.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

A similar provision was contained in s. 6 of the Municipal Corporations Act, 1835. Prior to that Act municipal corporations were called by various titles, but the change

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of name consequent upon this provision has not affected the identity of the corporations themselves. *Ludlow Corporation* v. *Tyler* (1836), 7 C. & P. 537 ; *Doe* d. *Governors of Bristol Hospital* v. *Norton* (1843), 11 M. & W. 913.

For the purposes of the Public Health Acts the urban authority of a borough is the mayor, aldermen, and burgesses acting by the council. Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 6. The proceedings of the council when acting under those Acts are regulated by the laws for the time being in force with respect to municipal corporations. *Ibid.*, s. 198. The council when so acting ought to be described by the name and style of the corporation, because they are not constituted a separate body for the purposes of those Acts. *Andrews* v. *Mayor of Ryde* (1874), L. R. 9 Ex. 302 ; 43 L. J. Ex. 174 ; 23 W. R. 58. See also *Mayor of Hyde* v. *Bank of England* (1882), 21 Ch. D. 176 ; 51 L. J. Ch. 747 ; 46 L. T. 910 ; 30 W. R. 790. By s. 21 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 554, urban sanitary authorities are now called urban district councils and their districts are called urban districts. The expression " district council " is to include the council of every urban district, whether a borough or not, but the style or title of the corporation or council of a borough is not to be altered.

By s. 31 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), certain large boroughs were constituted county boroughs, but this did not involve any change in the name or style of the corporation. See s. 34 (3) of that Act, *post*, p. 425. The provisions of s. 21 of the Local Government Act, 1894, which are referred to above, do not apply to county boroughs. See s. 35 of that Act, *post*, p. 426.

The corporation act by the council of the borough, who are to exercise all powers vested in the corporation (s. 10, *post*). Any reference in an Act of Parliament passed since 1889 to the powers, duties, liabilities or property of the council of a borough is to be construed as a reference to the powers, duties, liabilities or property of the mayor, aldermen, and burgesses of the borough acting by the council. Interpretation Act, 1889, s. 15, *post*.

By s. 1 of the Education Act, 1902, *post*, the council of a county borough and of a borough with a population of over ten thousand is constituted the local education authority for the purposes of that Act, but the council is not incorporated as a separate body, and throughout that Act the expression " the council " is used as meaning the mayor, aldermen, and burgesses acting by the council. *Re Leeds Institute of Science, &c., and Leeds City Council*, [1909] 1 Ch. 500 ; 78 L. J. Ch. 321 ; 100 L. T. 468 ; 73 J. P. 201 ; 7 L. G. R. 912 ; 25 T. L. R. 297.

County Councils.—The council of a county are a body corporate by the name of the county council with the addition of the name of the administrative county, and have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without licence in mortmain. Local Government Act, 1888, s. 79 (1), *post*.

Burgesses.

Qualification of burgess.

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess (*a*).

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows (*b*) :

(a) Is of full age (*c*) ; and

(b) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation (*d*), joint or several (*e*), of any house, warehouse, counting-house, shop, or other building (in this Act referred to as qualifying property (*f*)) in the borough ; and

(c) Has during the whole of those twelve months resided in the borough, or within seven miles thereof (*g*) ; and

(d) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate (*h*) ; and

(e) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January (*i*).

(3.) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(a) Is an alien (*k*); or

(b) Has within the twelve months aforesaid received union or parochial relief or other alms (*l*); or

(c) Is disentitled under any Act of Parliament (*m*).

(*a*) By s. 45, sub-s. (8), *post*, every person enrolled in the burgess roll is to be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll is to be deemed to be not enrolled as a burgess. A person who is enrolled in the burgess roll is empowered by s. 51, *post*, to vote at an election of councillors, even though he is not entitled so to be enrolled; but he cannot be elected a councillor unless he is not only in fact enrolled, but also entitled to be enrolled as a burgess. *Flintham* v. *Roxburgh*, cited in note (*e*) to s. 11, *post*, p. 20.

(*b*) This is what is known as the "old burgess qualification." An alternative qualification, called the "ten pounds occupation burgess qualification," has been introduced by s. 3 of the County Electors Act, 1888 (51 & 52 Vict. c. 10), which provides as follows:—"Every person who is entitled to be registered as a voter in respect of a ten pounds occupation qualification within the meaning of the provisions of the Registration Act, 1885, which are set out in the schedule to this Act, shall be entitled to be registered as a county elector, and to be enrolled as a burgess in respect of such qualification, in like manner in all respects as if the sections of the Municipal Corporations Act, 1882, relating to a burgess qualification included the said ten pounds occupation qualification." The schedule above referred to is as follows:—

"*Registration Act*, 1885.

"Definition of Ten Pounds Occupation Qualification.

"A person entitled to be registered as a voter in respect of a ten pounds occupation qualification in a borough, municipal or parliamentary—

"(a) must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in a parish [or township] of the clear yearly value of not less than ten pounds; and

"(b) must have resided in or within seven miles of the borough during six months immediately preceding the fifteenth day of July; and

"(c) such person or someone else must during the said twelve months have been rated to all poor rates made in respect of such land or tenement; and

"(d) all sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January next before the registration, or on account of any assessed taxes due before the said fifth day of January, must have been paid on or before the twentieth day of July.

"If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a voter.

"If a person has occupied in the borough different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as a voter in the parish [or township] in which the last occupied land or tenement is situate."

It will be seen that the ten pounds occupation burgess qualification differs from the old burgess qualification not only as regards the nature and the value of the qualifying property but as regards the length of the period of residence which is required. The payment of assessed taxes in addition to rates is a condition of the former franchise but not of the latter.

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The essential conditions of the municipal franchise are now therefore as follows:

1. Occupation of a building of any value or of land of the clear yearly value of ten pounds in the borough.

2. Residence in or within seven miles of the borough.

3. Rating and payment of rates.

A concise statement of what is required under each of these headings will be found in paragraphs 10 and 11 of the Form of Precept contained in the third schedule to the Registration Order, 1895, *post*, p. 576.

(*c*) In law a person attains full age at the first moment of the day before his twenty-first birthday. 1 Blackstone, Comm. 463. The text does not require that a person who seeks to be enrolled as a burgess must have been of full age during the whole of the qualifying period. See *Powell* v. *Bradley*, (1864) 18 C. B. (N. S.) 65; 34 L. J. C. P. 67; 11 L. T. 602; 13 W. R. 272; 10 Jur. (N. S.) 1241; 29 J. P. 503; Hopw. & Phil. 159; *Hargreaves* v. *Hopper*, (1875) 1 C. P. D. 195; 45 L. J. C. P. 105; 33 L. T. 530; 24 W. R. 186; 40 J. P. 215; 2 Hopw. & Colt. 304. If this section stood alone it would appear to be sufficient if he had attained full age at the date of the revision of the lists, but the effect of s. 28 (7) and (11) of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), *post*, pp. 338, 339, is to require that he shall have attained full age by the 31st of July. Section 7 of that Act, *post*, p. 329, which provides that every period of qualification for burgesses is to be computed by reference to the 15th of July instead of the 31st of July, does not appear to apply to the requirement as to age.

(*d*) **Occupation.**—Although the text does not in terms require occupation "as owner or tenant," the occupation must be legal and not mere physical occupation. The occupation of a dwelling-house by virtue of any office, service, or employment, which entitles a man to the "service franchise" for Parliamentary purposes under s. 3 of the Representation of the People Act, 1884 (48 & 49 Vict. c. 3), is not sufficient to entitle him to be enrolled as a burgess. *McClean* v. *Prichard*, (1887) 20 Q. B. D. 285; 58 L. T. 337; 36 W. R. 508; Fox & Smith 94; 52 J. P. 519; 4 T. L. R. 114. As to the distinction between occupation by virtue of service and occupation as a tenant, see *Smith* v. *Seghill*, (1875) L. R. 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T. 859; 23 W. R. 745; 40 J. P. 228; *Marsh* v. *Estcourt*, (1889) 24 Q. B. D. 147; 59 L. J. Q. B. 100; 38 W. R. 495; 54 J. P. 294; Fox & Smith 157; *Kent* v. *Fraser*, (1897) 61 J. P. 359; 1 Smith 127; 13 T. L. R. 417; *Dover* v. *Prosser*, [1904] 1 K. B. 84; 73 L. J. K. B. 13; 89 L. T. 724; 52 W. R. 140; 68 J. P. 37; 1 Smith 313; 2 L. G. R. 156; 20 T. L. R. 49.

A lodger is in a sense an occupier of his lodgings, but inasmuch as such occupation is not within the Poor Rate Acts he cannot be rated in respect of his lodgings and therefore is not qualified for enrolment as a burgess. See the judgment of Lindley, L.J. in *Bradley* v. *Baylis*, *infra*. Although the requirement as to rating is satisfied if either the occupier or his landlord is rated (see note (*h*), *infra*), it is essential that the qualifying premises should be rateable and that some one should be rated in respect of them.

The difference between an occupying tenant and a lodger is not easy to define, but may be said to depend upon the degree of control which is exercised over the premises by the landlord. Where a dwelling-house is let in separate tenements, the fact that the landlord resides in the house raises a presumption that the occupiers of the tenements are lodgers; but while that is the inference which may be drawn, it is not a necessary inference of law. The test is whether the landlord retains control over that part of the premises in respect of which the franchise is claimed. If the person to whom part of such premises is let has in fact the exclusive enjoyment of that part and the landlord has no right to interfere with or exercise control over it or the user of it, his occupation is that of a tenant; but if the landlord is really in control of that part of the house, the relationship between the parties is that of landlord and lodger. *Kent* v. *Fittall*, [1906] 1 K. B. 60; 75 L. J. K. B. 310; 94 L. T. 76; 54 W. R 225; 69 J. P. 428; 1 Smith 417; 4 L. G. R. 36; 22 T. L. R. 63; *Douglas* v. *Smith*, [1907] 2 K. B. 568; 76 L. J. K. B. 969; 96 L. T. 826; 71 J. P. 433; 2 Smith 12; 5 L. G. R. 1004; 23 T. L. R. 612. See also *R.* v. *Bell*, (1908) 71 J. P. 542; 24 T. L. R. 66, 266; *Kent* v. *Fittall* (No. 2), [1908] 2 K. B. 933; 77 L. J. K. B. 1065; 99 L. T. 761; 72 J. P. 421; 2 Smith 63; 6 L. G. R. 1047; 24 T. L. R. 830; *Kent* v. *Fittall* (No. 3), [1909] 1 K. B. 215; 78 L. J. K. B. 110; 99 L. T. 776; 73 J. P. 33; 2 Smith 93;

7 L. G. R. 37 ; 25 T. L. R. 41. See also *Toms* v. *Luckett*, (1847) 5 C. B. 23 ; 17 L. J. C. P. 27 ; 11 Jur. 993 ; 2 Lutw. R. C. 19 ; *Stamper* v. *Sunderland Overseers*, (1868) L. R. 3 C. P. 388 ; 37 L. J. M. C. 137 ; 18 L. T. (N. S.) 682 ; 16 W. R. 1063 ; *Bradley* v. *Baylis*, *Morfee* v. *Novis*, and *Kirby* v. *Biffen*, (1881) 8 Q. B. D. 195 ; 51 L. J. Q. B. 183 ; 46 L. T. 253 ; 30 W. R. 823 ; 45 J. P. 847 ; Colt. 163 ; *Morton* v. *Palmer*, (1881) 30 W. R. 115 ; 46 J. P. 150 ; *Ness* v. *Stephenson*, (1882) 9 Q. B. D. 245 ; 47 J. P. 134 ; *Ancketill* v. *Baylis*, (1882) 10 Q. B. D. 577 ; 52 L. J. Q. B. 104 ; 48 L. T. 342 ; 31 W. R. 233 ; 47 J. P. 356 ; Colt. 289 ; *Heawood* v. *Bone*, (1884) 13 Q. B. D. 179 ; 51 L. T. 125 ; 32 W. R. 752 ; 48 J. P. 710 ; *Mc Laughlin* v. *Chambers*, [1896] 2 Ir. R. 497.

A voter, who was a yearly tenant, was adjudicated bankrupt during the qualifying period, but continued to occupy the premises and to pay rent to the landlord, and his trustee in bankruptcy did not interfere in any way. It was held that there had been a continuous occupation by the voter, in spite of the fact that the tenancy vested in the trustee on his bankruptcy. *McKay* v. *McGuire*, [1891] 1 Q. B. 250 ; 60 L. J. Q. B. 24 ; 64 L. T. 83 ; 39 W. R. 109 ; 55 J. P. 214 ; Fox & Smith 201 ; 7 T. L. R. 55.

In pursuance of a verbal agreement the respondent took over from his mother the business of an inn which she had kept. He had the entire management of the inn and paid the rates, but his mother continued to reside in the house free of charge, and there was no assignment of the lease or transfer of the licence to the respondent. It was held by a Divisional Court that he was the occupier of the premises and was entitled to be enrolled as a burgess. *Unwin* v. *McMullen*, [1891] 1 Q. B. 694 ; 60 L. J. Q. B. 400 ; 39 W. R. 712 ; 7 T. L. R. 397.

Where a married woman carried on business in her own name on premises of which she was the tenant and in respect of which she was rated, it was held that her husband, who lived with her and assisted in the business, was not entitled to be registered as occupier. *Prentice* v. *Markham*, (1892) 9 T. L. R. 58 ; Fox & Smith 301. See also *Loveridge* v. *Gardom*, (1899) 1 Smith 186 ; 15 T. L. R. 282.

Where a husband and wife are living together in a house belonging to the wife, the husband is not qualified in the absence of any agreement of tenancy between them. *Hall* v. *Michelmore*, (1901) 86 L. T. 17 ; 50 W. R. 169 ; 1 Smith 269 ; 18 T. L. R. 33. But there is nothing in the relation of husband and wife to prevent them from entering into a binding agreement by which the husband becomes the tenant of his wife. *Pearce* v. *Merriman*, [1904] 1 K. B. 80 ; 73 L. J. K. B. 183 ; 89 L. T. 745 ; 52 W. R. 141 ; 68 J. P. 37 ; 1 Smith 318 ; 2 L. G. R. 139 ; 20 T. L. R. 48.

Where the site of a market was let in separate plots or stands, which, though not enclosed or marked, were defined and well known, the occupiers of the stands were held to be entitled to the borough occupation franchise. *Hall* v. *Metcalfe*, [1892] 1 Q. B. 208 ; 61 L. J. Q. B. 53 ; 66 L. T. 496 ; Fox & Smith 227 ; 8 T. L. R. 46. But in an Irish case the weekly tenants of stalls in a market belonging to a corporation, which was closed every night, were held not to be occupiers but mere licensees. *Lovell* v. *Callaghan*, [1894] 2 Ir. R. 346.

The occupier of certain premises transferred them to a limited company during the qualifying period, and took a lease from the company of part of the premises which he had formerly used as an office and which he continued to use as such. It was held that the change in the character of the occupation did not effect any break in the occupation of the office. *Timmis* v. *Albiston*, [1895] 2 Q. B. 58 ; 64 L. J. Q. B. 564 ; 59 J. P. 663 ; Fox and Smith 426 ; 11 T. L. R. 399.

The occupier of a house does not lose his qualification by letting it as a furnished dwelling-house during part of the qualifying period, not exceeding four months in the whole. 48 & 49 Vict. c. 9, s. 2, cited in note (*g*), *post*, p. 10.

By s. 33, sub-s. (1), *post*, where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then for the purpose of qualification the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, is equivalent to the occupancy and rating of the successor, and the successor is not required to prove his own occupancy before the succession.

(*e*) Under s. 9 of the Municipal Corporations Act, 1835, which did not contain the words "joint or several," it was held that a joint occupation was sufficient. *R.* v. *Mayor of Exeter*, *Dipstale's Case*, (1868) L. R. 4 Q. B. 114 ; 19 L. T. (N. S.) 432 ; 33 J. P. 39.

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Where four canons who were entitled to occupy a house jointly entered into an agreement by which each of them in turn had exclusive occupation of the house for three months in the year, it was held that there was no joint occupation. *Rowland* v. *Pritchard*, (1893) 62 L. J. Q. B. 319; 68 L. T. 586; 57 J. P. 759; Fox & Smith 310; 9 T. L. R. 279.

(*f*) **Qualifying Property.**—The text requires the occupation of some building, but does not prescribe any limit of value. Under the alternative qualification introduced by s. 3 of the County Electors Act, 1888 (see note (*b*), *supra*), the qualifying property need not be a building, but must be some land or tenement of the clear yearly value of not less than ten pounds.

The terms house, warehouse, counting-house, shop, or other building include any part of a house where that part is separately occupied either for the purposes of any trade, business or profession, or as a private dwelling. See s. 31, *post*, and the notes to that section.

By s. 33, sub-s. (2), *post*, the qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

There is no express requirement in this Act such as is to be found in statutes relating to the Parliamentary franchise (*e.g.*, 2 & 3 Will. 4, c. 45, s. 28), that in a case of successive occupation the different premises must be occupied in immediate succession, but there is no doubt that this is involved in the requirement of s. 9 that the occupation must have been during the whole of the twelve months.

As to the occupation of rooms in the Universities of Oxford and Cambridge, see s. 257, sub-s. (3), *post*.

The terms "house, warehouse, counting-house, shop or other building" are not defined in the Act, but from cases decided with reference to the same words in s. 27 of the Reform Act, 1832 (2 & 3 Will. 4, c. 45), it appears that "house" means a dwelling-house, while the other terms used are descriptive of places of business. See *Powell* v. *Farmer*, (1865) 18 C. B. (N. S.) 168: 34 L. J. C. P. 71; Hopw. & Phil. 172; 11 L. T. (N. S.) 736; 13 W. R. 467; 29 J. P. 536; 11 Jur. (N. S.) 162; *Powell* v. *Boraston*, (1865) 18 C. B. (N. S.) 175; 34 L. J. C. P. 73; Hopw. & Phil. 179; 11 L. T. (N. S.) 734; 13 W. R. 465; 29 J. P. 550; 11 Jur. (N. S.) 160. See also *Nunn* v. *Denton*, (1844) 7 M. & G. 66; 14 L. J. C. P. 43; 8 Scott N. R. 794; 8 Jur. 1102; 1 Lutw. 178; Barr. & Arn. 324; *Daniel* v. *Coulsting*, (1845) 7 M. & G. 122; 14 L. J. C. P. 70; 9 Jur. 258; 8 Scott N. R. 949; 1 Lutw. 230; Barr. & Arn. 380.

"Counting-house" has been held to include a solicitor's office *Re Creek*, (1863) 3 B. & S. 459; 32 L. J. Q. B. 89; 11 W. R. 234; 9 Jur. (N. S.) 646.

In an Irish case stalls in a market building which were open in front and fitted with moveable benches were held not to be shops. *Lovell* v. *Callaghan*, [1894] 2 Ir. R. 346.

The words "or other building" mean a building *ejusdem generis* with those already mentioned. Although no limit of value is fixed by the Act, a building within the meaning of the text must possess in some degree the qualities of permanence, utility, and value. The question whether a particular structure is a building is one rather of fact than of law. *Powell* v. *Boraston*, *supra*; *Morish* (or *Norrish*) v. *Harris*, (1865) L. R. 1 C. P. 155; 35 L. J. C. P. 101; 13 L. T. (N. S.) 762; 14 W. R. 479; 21 Jur. (N. S.) 627; Hopw. & Phil. 305; *Watson* v. *Cotton*, (1847) 5 C. B. 51; 17 L. J. C. P. 68; 11 Jur. 1106; 2 Lutw. 53. Reference may also be made to the following cases as illustrating the meaning of the term building: *Whitmore* v. *Bedford*, (1843) 5 M. & G. 9; 13 L. J. C. P. 55; 7 Jur. 1064; 7 Scott N. R. 489; 1 Lutw. 10; Barr. & Arn. 14; *Wright* v. *Town Clerk of Stockport*, (1843) 5 M. & G. 33; 13 L. J. C. P. 50; 7 Jur. 1112; 7 Scott N. R. 561; 1 Lutw. 32; Barr. & Arn. 39.

(*g*) **Residence.**—The period of residence required for the old burgess qualification is twelve months, while that required for the ten pounds occupation burgess qualification is six months. See note (*b*), *supra*. The requirement as to residence, however, has been modified in certain cases by later enactments. Thus the Municipal Voters Relief Act, 1885 (48 & 49 Vict. c. 9), s. 2, provides as follows: "From and after the passing of this Act a man shall not be disqualified from being enrolled or voting as a burgess at any municipal election in a borough in respect of the occupation of any house, by reason only that during a part of the qualifying period, not exceeding

four months in the whole, he has, by letting or otherwise, permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough." It is to be noted that this provision applies only to furnished dwelling-houses.

The Electoral Disabilities Removal Act, 1891 (54 & 55 Vict. c. 11), s. 2, provides as follows: "A person shall not be disqualified from being registered . . . in the local government register of electors for a . . . borough (*i.e.*, the burgess roll; see s. 17 of the Interpretation Act, 1889, *post*, p. 479) in respect of his occupation of any house, warehouse, counting-house, shop, building, land, or tenement, by reason only that during part of the qualifying period, not exceeding four months at any one time, he has in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, . . . not resided in or within the required distance from such . . . borough." See *Marsh* v. *Bantoft*, (1902) 88 L. T. 230; 51 W. R. 155; 67 J. P. 12; 1 Smith 289; 1 L. G. R. 106; 19 T. L. R. 36.

The term "residence" is not defined in this Act, and its meaning varies in different statutes according to the object and intention of the Legislature in the particular case. *Powell* v. *Guest*, *infra*; *Blackwell* v. *England*, (1857) 27 L. J. Q. B. 124; 8 E. & B. 541; 30 L. T. (O. S.) 148; 6 W. R. 59; 21 Jur. 1302.

The following passage from Elliott on Registration, which was quoted with approval by Erle, C.J., in *Powell* v. *Guest*, *infra*, explains the meaning of this term as used in a statute relating to the qualification of electors:—"In order to constitute residence, a party must possess at the least a sleeping apartment, but an uninterrupted abiding at such dwelling is not requisite. Absence no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence. But if he has debarred himself of the liberty of returning to such dwelling by letting it for a period however short, or has abandoned his intention of returning, he cannot any longer be said to have even a legal residence there." The question whether the requirements of the Act with regard to residence have been complied with is a question of degree, and depends upon the facts of the particular case. See *Ward* v. *Maconochie*, (1891) 7 T. L. R. 536. The residence must be *bonâ fide* and not merely colourable; but the fact that the voter's object in residing was to obtain the franchise does not prevent him from being duly qualified. *Whithorn* v. *Thomas*, *infra*. The following decisions on the corresponding provisions of the Municipal Corporations Act, 1835, and the various statutes relating to Parliamentary registration, appear to show that if a man has a permanent home where his family or household is established, he is to be regarded as residing in that home, even if he has not in fact lived there during any part of the qualifying period, provided that he is at liberty to return to it when he thinks fit, and has not abandoned the intention to do so. If, on the other hand, he has no such permanent home, it is necessary to prove that he has in fact lived at the place where his sleeping apartment was situate during substantially the whole of the qualifying period, although it is not necessary to show that he has actually slept there every night during that period. It will be noticed that some of the cases cited below are decisions as to the meaning of the word "inhabitant," which for the purpose of statutes relating to the registration of electors appears to be synonymous with "resident." See *Atkinson* v. *Collard*, (1885) 16 Q. B. D. 254; 55 L. J. Q. B. 18; 53 L. T. 670; 34 W. R. 75; 50 J. P. 23; Colt. 375; 2 T. L. R. 40.

A claimant lived with his wife and family and carried on his business in a house more than seven miles outside the borough. He paid 9*d.* a week for the use of a furnished bedroom in the borough, and of a dark closet in which he kept wine-samples. He had slept in this room a dozen times during the qualifying period. *Held*, that he had not resided in the borough. *Whithorn* v. *Thomas*, (1844) 7 M. & G. 1; 14 L. J. C. P. 38; 8 Scott N. R. 783; 8 Jur. 1008; 1 Lutw. 125; Barr. & Arn. 259.

Where during five months out of six the claimant was serving a term of imprisonment for assault in a gaol more than seven miles from the borough, it was held that he had not resided in the borough during the six months, although his house was occupied and his business was carried on during his absence by his servant. He had the *animus revertendi*, but was not at liberty to return. *Powell* v. *Guest*, (1864) 18 C. B. (N. S.) 72; 34 L. J. C. P. 69; 11 L. T. (N. S.) 599; 13 W. R. 274; 10 Jur. (N. S.) 1238; Hopw. & Phil. 149; 29 J. P. 424; See also the following Irish decisions

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as to the effect of absence during imprisonment: *Donnelly* v. *Graham*, (1888) 24 L. R. Ir. 127; *McCarron* v. *Chambers*, (1890) 28 L. R. Ir. 294; *Charlton* v. *Morris*, [1895] 2 Ir. R. 541; *Holland* v. *Hagan*, *ibid.*, 551.

The defendant occupied a house in the borough in which he kept his furniture and took his meals. His son and servants slept there. The defendant also had a bed there, but during the last three years he had slept in lodgings outside the town because the state of his wife's health prevented her from living in the town. It was held that he was qualified by residence. *Reg.* v. *Boycott*, (1886) 14 L. T. (N. S.) 599.

A man who had for many years carried on business in Exeter went to live in London. He continued to carry on his business in Exeter, where he kept some offices and a bedroom in which he slept when he visited Exeter for the purposes of his business. Between Michaelmas and July he had made about twenty such visits, each of which lasted from four to ten days. It was held that he had resided in Exeter as well as in London. *R.* v. *Mayor of Exeter, Wescomb's Case*, (1868) L. R. 4 Q. B. 110; 19 L. T. (N. S.) 397.

A claimant lived more than seven miles from the borough, but carried on his business at a house in the borough where he kept a furnished bedroom in which he sometimes slept when his business required. There was no evidence as to the number of times that he had slept there during the past year. It was held that the evidence was insufficient to show that he was an inhabitant of the borough. *R.* v. *Mayor of Exeter, Dipstale's Case*, (1868) L. R. 4 Q. B. 114; 19 L. T. (N. S.) 432; 33 J. P. 39. And see *Barlow* v. *Smith*, (1892) Fox & Smith 293; 9 T. L. R. 57.

A man may be qualified by residence in more than one place during the qualifying period. Thus a claimant was held to have resided in lodgings in which his wife and children lived and in which he could sleep when he liked, and, in fact, slept one or two nights every week, although he usually slept in the house of a gentleman upon whom he attended. *Taylor* v. *Overseers of St. Mary Abbott's, Kensington*, (1870) L. R. 6 C. P. 309; 40 L. J. C. P. 45; 23 L. T. 493; 19 W. R. 100; 35 J. P. 39; 1 Hopw. & Colt. 421. See also the case next cited, and *R.* v. *Mayor of Exeter, Wescomb's Case, supra*; *Sim* v. *Galt*, (1892) 20 Court of Sess. Cas. (4th series) 84.

A person who had lodgings in London of which he was sole tenant, and at which he had resided at intervals for two months out of twelve, was held to be qualified by residence, although during the remainder of the twelve months he had resided in his house in the country, at which he kept an establishment of servants all the year round. *Bond* v. *Overseers of St. George's, Hanover Square*, (1870) L. R. 6 C. P. 312; 40 L. J. C. P. 47; 23 L. T. 494; 19 W. R. 101; 35 J. P. 88; 1 Hopw. & Colt. 427.

The incumbent of a benefice was absent from the rectory house during the greater part of the qualifying period, and the house was occupied by a curate under a licence from the bishop. It was held that the incumbent was not qualified by residence. *Durant* v. *Carter*, (1873) L. R. 9 C. P. 261; 43 L. J. C. P. 17; 29 L. T. 681; 22 W. R. 158; 38 J. P. 119; 2 Hopw. & Colt. 142.

A clergyman entered into an arrangement with another clergyman by which they exchanged duties and residences for a term of two months, which included one month of the qualifying period. It was held that there was such a break in the residence as to prevent him from being qualified. *Ford* v. *Pye*, (1873) L. R. 9 C. P. 269; 43 L. J. C. P. 21; 29 L. T. (N. S.) 684; 22 W. R. 159; 38 J. P. 136; 2 Hopw. & Colt. 157. But see now 48 & 49 Vict. c. 9, *ante*, p. 10.

An officer in the army, who lived at his mother's house during his leave of absence, which usually amounted to three months in the year, was held not to be qualified by residence, because the conditions of his service prevented him from returning to his mother's house whenever he pleased. *Ford* v. *Hart*, (1873) L. R. 9 C. P. 273; 43 L. J. C. P. 24; 29 L. T. 685; 22 W. R. 159; 38 J. P. 216; 2 Hopw. & Colt. 167. See also *Ford* v. *Barnes*, (1885) 16 Q. B. D. 254; 55 L. J. Q. B. 24; 53 L. T. 675; 34 W. R. 75; 50 J. P. 23; Colt. 396; *Spittall* v. *Brook*, (1886) 18 Q. B. D. 426; 56 L. J. Q. B. 48; 56 L. T. 364; 35 W. R. 520; Fox & Smith 22; 3 T. L. R. 158; *Donoghue* v. *Brook*, (1887) 57 L. J. Q. B. 122; 58 L. T. 411; Fox & Smith 100; 4 T. L. R. 120. So a seaman who was absent during part of the qualifying period on compulsory service on board his ship has been held in Ireland not to be qualified. *Hassan* v. *Chambers*, (1888) 24 L. R. Ir. 139; *Duffy* v. *Chambers*, (1889) 26 L. R. Ir. 100. It is not necessary that the claimant should have had a legal right to reside at the place where he has in fact resided. *Beal* v. *Ford*, (1877) 3 C. P. D. 73; 47

L. J. C. P. 56; 37 L. T. 408; 26 W. R. 146; 42 J. P. 119; 2 Hopw. & Colt. 374; and see *Ford* v. *Hart*, *supra*.

Where during part of the qualifying period the respondent, who claimed to have resided at his father's house in Exeter, was absent serving under articles to a solicitor in London, it was held that he had not resided for the required period, because, being bound by the articles, he had neither the liberty nor the intention to return. *Ford* v. *Drew*, (1879) 5 C. P. D. 59; 49 L. J. C. P. 172; 41 L. T. 478; 28 W. R. 137; 44 J. P. 58; Colt. 1. So where the appellant was during the greater part of the qualifying period employed as an assistant in a shop in London, it was held that he had not resided at his father's house in Exeter, although a bedroom was set apart there for his exclusive use, because he was not at liberty to return to Exeter without breaking his contract. *Beal* v. *Town Clerk of Exeter*, (1887) 20 Q. B. D. 300; 57 L. J. Q. B. 128; 58 L. T. 407; 36 W. R. 507; 52 J. P. 501; Fox & Smith 31; 4 T. L. R. 111.

In a case decided under the Local Government Act, 1894 (56 & 57 Vict. c. 73), the respondent, who was a member of a metropolitan vestry, and who lived with his wife in a house in Sussex, hired the exclusive use of a bedroom at the house of a friend in Lewisham, together with the use of a sitting-room, partly in order to be able to attend to his public duties, and partly in order to qualify himself by residence in the parish. During the qualifying period he occupied the room on an average three nights a week except during the month of August and for two or three weeks in January and for six weeks in the spring when he went to America. During the whole of this period, however, he was at liberty to use the room whenever he liked. It was held that he had resided in the parish during the qualifying period. *Stanford* v. *Williams*, (1899) 80 L. T. 490; 43 Sol. J. 419; 15 T. L. R. 316.

A person who succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, is not required for the purpose of qualification to prove his own residence before the succession. Section 33, sub.-s. (1), *post*.

The seven miles are to be measured in a straight line on a horizontal plane, and may be determined by the Ordnance Survey Map. Section 231, *post*.

(*h*) **Rating.**—A mistake in the entry of a person's name in the rate book does not disqualify him if it is shown that the entry is intended to relate to him. *Reg.* v. *Gregory*, (1853) 17 Jur. 439.

The requirement that the occupier must have been rated in respect of the qualifying property is to be read as qualified by s. 19 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), *post*, p. 254, and by s. 32 of this Act, the effect of which is that it is sufficient if either the occupier or the landlord has been so rated. See the notes to s. 32, *post*.

If, however, premises which ought to have been rated have been omitted from a rate made during the qualifying period, and no claim to be rated in respect of them has been made by the occupier, he is not entitled to the franchise, for s. 19 of 32 & 33 Vict. c. 41, assumes that the premises are rated. *Palmer* v. *Wade*, [1894] 1 Q. B. 268; 70 L. T. 407; 58 J. P. 511; Fox & Smith 323; 10 T. L. R. 139; following *McGaffigan* v. *Riddall*, (1890) 28 L. R. Ir. 257. See also *Pitts* v. *Michelmore*, [1909] 2 K. B. 244; 78 L. J. K. B. 898; 101 L. T. 188; 73 J. P. 313; 2 Smith 130; 7 L. G. R. 518; 25 T. L. R. 492, decided under ss. 3 and 26 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102).

It is to be observed that this clause applies only to poor rates, whereas the next clause which requires payment of rates, applies to borough rates as well. The borough rate is in fact part of the poor rate. See note (*b*) to s. 144, *post*. A poor rate is to be deemed to be made on the day when it is allowed by the justices. 32 & 33 Vict. c. 41, s. 17.

Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, the rating of his predecessor in title in respect thereof is equivalent to the rating of the successor, and the latter is not required to prove his rating before the succession. Section 33 (1), *post*.

(*i*) **Payment of Rates.**—The requirements of this section with regard to the payment of rates are to be read as modified by the provisions of the Registration Acts, the effect of which is that only such rates need have been paid as were made during the twelve months immediately preceding the 5th day of January next before the revision of the lists and became payable on or before that date. See paragraph 10

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of the Form of Precept contained in the third schedule to the Registration Order, 1895, *post*, p. 576, and the case of *Cull* v. *Austin*, (1872) L. R. 7 C. P. 227; 41 L. J. C. P. 153; 26 L. T. 767; 20 W. R. 863; 36 J. P. 502; 1 Hopw. & Colt. 741, which was decided under the corresponding provision of 30 & 31 Vict. c. 102, s. 3, relating to Parliamentary electors.

By s. 7 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), *post*, p. 252, every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as therein provided (*i.e.*, in cases where a rate assessed upon a tenement let for a term not exceeding three months has been paid by the occupier, or where the owner is liable to pay the rates but has neglected to do so, and the rates have been paid by the occupier or levied by distress on his goods), and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, is to be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which as regards rating depends upon the payment of the poor rate. And by s. 2 of the Assessed Rates Act, 1879 (42 & 43 Vict. c. 10), *post*, p. 254, no qualification or franchise depending upon rating or upon payment of rates is to be defeated by reason of the want or insufficiency of any agreement, order, notice, or proceeding necessary for the validity of an allowance or deduction made under the Act of 1869. Where, however, the rates are payable by the owner and have not been paid, the occupier is not qualified to be enrolled, even though he has not received any notice that the rates are in arrear. See *Clarke* v. *Buchanan* (*Carlin's Case*), (1886) 20 L. R. Ir. 244.

Section 147, *post*, provides that where an order has been made by the vestry of a parish under 32 & 33 Vict. c. 41, s. 4, *post*, p. 251, for the rating of the owners of small tenements to the poor rate instead of the occupiers, such order is to be deemed to apply to rating to the borough rate with the same incidents as if the borough rate were a poor rate.

Even in cases to which the Act of 1869 does not apply, personal payment of the rates by the occupier is not required; it is sufficient that the rates are paid by him indirectly in the shape of increased rent. *Moger* v. *Escott*, (1872) L. R. 7 C. P. 158; 41 L. J. C. P. 86; 26 L. T. 99; 20 W. R. 368; 36 J. P. 247; 1 Hopw. & Colt. 645; *Marsh* v. *Estcourt*, (1889) 24 Q. B. D. 147; 59 L. J. Q. B. 100; 38 W. R. 495; 54 J. P. 294; Fox & Smith 157; and see *Wright* v. *Town Clerk of Stockport*, (1843) 5 Man. & G. 33; 13 L. J. C. P. 50; 7 Jur. 1112; 7 Scott N. R. 561; 1 Lutw. 32; Barr. & Arn. 39. So where a claimant was rated in respect of a house the rates of which were paid by his employers as part remuneration for his services, it was held that the rates were in effect paid by him. *Hughes* v. *Overseers of Chatham*, (1843) 5 M. & G. 54; 13 L. J. C. P. 44; 7 Jur. 1136; 7 Scott N. R. 581; 1 Lutw. 51; Barr. & Arn. 61. On the other hand, payment of the rates by a stranger without the authority of the occupier is not sufficient to entitle the latter to be enrolled. *Reg.* v. *Bridgnorth*, (1839) 10 A. & E. 66; 2 P. & D. 317; 8 L. J. (N. S.) M. C. 86; 3 Jur. 384; 50 R. R. 334.

Under the repealed s. 12 of 17 Geo. 2, c. 38, it was held that where there had been a change in the occupation of the qualifying premises during the currency of a rate, the incoming tenant was not liable to pay a proportionate part of the rate until he was called upon by the overseers to do so. *Flatcher* v. *Boodle*, (1865) 18 C. B. (N. S.) 152; 34 L. J. C. P. 77; 11 L. T. (N. S.) 630; 13 W. R. 340; 11 Jur. (N. S.) 67; Hopw. & Phil. 238. In such cases it is now the duty of the overseers to enter in the rate book the name of the incoming tenant and the date when his occupation commenced, and he is to be deemed to have been rated from the date so entered. 32 & 33 Vict. c. 41, s. 16, *post*, p. 253.

An order of justices under 54 Geo. 3, c. 170, s. 11, excusing any person from payment of a poor rate on the ground of poverty, is not equivalent to payment of that rate by the person liable. *Abel* v. *Lee*, (1871) L. R. 6 C. P. 365; 40 L. J. C. P. 154; 23 L. T. 844; 19 W. R. 625; 35 J. P. 343; 1 Hopw. & Colt. 515; *Cull* v. *Austin*, *supra*. But the failure to pay a rate which is for any reason invalid does not disentitle a person to be enrolled as a burgess, *e.g.*, a poor rate which has not been duly allowed by the justices, or which does not show the purpose for which it was made. *Reg.* v. *Mayor of New Windsor*, (1845) 7 Q. B. 908; *Fox* v. *Davies*, (1848)

18 L. J. C. P. 48; 6 C. B. 11; 12 L. T. (O. S.) 244; 13 Jur. 155; 2 Lutw. 97; *Reg.* v. *Eastern Counties Railway*, (1856) 5 E. & B. 974; 25 L. J. M. C. 49.

As regards borough rates, see s. 144, *post*. A rate made under a local Act for paving and lighting part of a borough was held not to be a borough rate within the meaning of the corresponding section of the Act of 1835. *Reg.* v. *Lichfield*, (1842) 2 Q. B. 693; 2 G. & D. 10; 6 Jur. 624.

Where a poor rate is made for a period exceeding three months, the overseers have power to make it payable by instalments at specified times, and if they do so the payment of any such instalment is to be deemed, as respects any qualification or franchise depending upon the payment of the poor rate, a payment of such rate in respect of the period to which such instalment applies. 32 & 33 Vict. c. 41, s. 15, *post*, p. 253. A similar provision with respect to a borough rate payable by instalments is contained in s. 33 (3), *post*.

In every municipal borough which is wholly or in part co-extensive with a parliamentary borough the overseers are required to give notice to occupiers with respect to rates in arrear. See 41 & 42 Vict. c. 26, s. 10, *post*, p. 330. In cases where the rates are payable by the owner of the premises the failure of the overseers to give such notice does not entitle the occupier to be enrolled if the rates have not been paid. *Clarke* v. *Buchanan* (*Carlin's Case*), *ante*, p. 14.

The poor rate is one indivisible rate, although the purposes for which it is levied include other matters besides the relief of the poor. Therefore a person who has not paid the whole amount of the rates assessed upon him is not entitled to be enrolled as a burgess or as a county elector. For instance, a so-called "passive resister" who has refused to pay so much of the poor rate as is levied for the purposes of the Education Acts is not qualified to be enrolled although he has paid so much of the rate as is demanded for the purposes of poor relief. *Ash* v. *Nicholl*; *Cox* v. *Merriman*, [1905] 1 K. B. 139; 74 L. J. K. B. 74; 91 L. T. 803; 53 W. R. 173; 69 J. P. 6; 1 Smith 355; 3 L. G. R. 11; 21 T. L. R. 62.

It is to be observed that payment of assessed taxes, which is a condition of the ten pounds occupation qualification, is not required for the old burgess qualification. On the other hand, the latter qualification requires payment of borough rates as well as poor rates, but this is not required for the ten pounds occupation qualification. See note (*b*), *ante*.

(*k*) Alien.—At common law every person born within the dominions of the Crown (except the children of foreign ambassadors) is a natural-born British subject, although the children of foreign parents can elect to assume the nationality of their parents. Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 4.

Persons born in Hanover before the accession of Queen Victoria to the throne of the United Kingdom were held to be aliens, although they were resident in the United Kingdom. *Isaacson* v. *Durant*, (1886) 17 Q. B. D. 54; 55 L. J. Q. B. 331; 54 L. T. 684; 34 W. R. 547; 2 T. L. R. 559. A British subject who has become naturalized in a foreign state is to be regarded as an alien. 33 & 34 Vict. c. 14, s. 6.

An alien who has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a like period, and who intends when naturalized either to reside in the United Kingdom or to serve under the Crown, may apply to the Home Secretary for a certificate of naturalization. If the certificate is granted, the applicant is entitled, after taking the oath of allegiance, to all political and other rights, powers, and privileges, and is subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom. 33 & 34 Vict. c. 14, s. 7. This provision removes the disqualification of an alien for enrolment as a burgess if he has obtained a certificate of naturalization. As regards the national status of married women and infant children, see s. 10 of the same Act.

(*l*) Receipt of Relief.—The term "union" relief is applicable to cases in which poor law relief is charged on the common fund of a union under 4 & 5 Will. 4, c. 76, s. 36; "parochial" relief means poor law relief administered by a board of guardians elected for a single parish which is not comprised in a union. Where a man who has applied to the guardians for work was employed by them in breaking stones and was paid an amount which far exceeded the value of his work, it was held that the payment was intended to be and was received as parochial relief. *Magarrill* v. *Overseers of Whitehaven*, (1885) 16 Q. B. D. 242; 55 L. J. Q. B. 38; 53 L. T. 667; 34 W. R. 275; 49 J. P. 743; Colt. 448; 2 T. L. R. 19.

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In a municipal borough which is wholly or partly co-extensive with a parliamentary borough, the overseers are to ascertain from the relieving officer the names of all persons disqualified by the receipt of parochial relief. 41 & 42 Vict. c. 26, s. 12, *post*, p. 332.

The expression "other alms" means alms of the nature of parochial relief distributed by the parish, and does not apply to private benefactions. Thus where the trustees of a charity established by a private individual were directed to distribute the income among poor housekeepers of a borough who were not in receipt of parochial relief, it was held that the beneficiaries were not disqualified under the corresponding provision of the Act of 1835. *Reg.* v. *Mayor of Lichfield*, (1842) 2 Q. B. 693; 2 G. & D. 10; 6 Jur. 624. Under 56 Geo. 3, c. 139, s. 11, which provided that no indenture of apprenticeship by reason of which any expense was incurred by the public parochial funds should be valid unless approved by two justices, it was held that charity lands, the income of which was applied by the churchwardens and overseers in apprenticing poor children of the parish, did not come within the Act, and that the term "public parochial fund" meant one that was contributed by the inhabitants of the parish, or that was applicable to the general purposes of the relief of the poor, and not for the benefit of a particular class of persons. *R.* v. *Halesworth*, (1832) 3 B. & Ad. 717; 1 L. J. (N. S.) M. C. 71. The following decisions upon s. 36 of the Reform Act, 1832 (2 & 3 Will. 4, c. 45), may also be referred to, but it is to be observed that the words used in that section, "parochial relief or other alms which by the law of Parliament now disqualify from voting," are wider than those used in the text, and apply to alms which are not of the nature of parochial relief. See *Baker* v. *Town Clerk of Monmouth*, (1886) 53 L. T. 668; 34 W. R. 64; 49 J. P. 776; 2 T. L. R. 22. The income of land and house property belonging to a charitable foundation was distributed annually among the members of the foundation who were appointed by the trustees of the charity. It was held that the receipt of a share of this income did not disqualify the recipients, because they were entitled to it as a matter of right. The object of the Act was to prevent persons so placed by their indigence as to be presumably subservient and destitute of all freedom of mind from exercising the franchise. *Smith* v. *Hall*, (1863) 15 C. B. (N. S.) 485; 33 L. J. C. P. 59; 9 L. T. (N. S.) 413; 12 W. R. 172; 9 Jur. (N. S.) 1340; 28 J. P. 167; Hopw. & Phil. 11; *Cowen* v. *Town Clerk of Kingston-upon-Hull*, [1897] 1 Q. B. 273; 66 L. J. Q. B. 185; 75 L. T. 593; 45 W. R. 413; 61 J. P. 356; 13 T. L. R. 143; 1 Smith 96. On the other hand, where the income of a private charity was directed to be distributed among the poorest inhabitants of a parish according to the discretion of the trustees, the receipt of a donation from the charity was held to disqualify. *Harrison* v. *Carter*, (1876) 2 C. P. D. 26; 46 L. J. C. P. 57; 35 L. T. 511; 25 W. R. 182; 41 J. P. 23; 2 Hopw. & Colt. 324. See also *Daniels* v. *Allard*, W. N. (1887) 222; 4 T. L. R. 116; Fox & Smith 70; *Edwards* v. *Lloyd*, (1887) 20 Q. B. D. 302; 57 L. J. Q. B. 121; 58 L. T. 409; 52 J. P. 519; Fox & Smith 54; *Dix* v. *Kent*, (1890) 63 L. T. 641; 39 W. R. 173; 55 J. P. 213; Fox & Smith 186; 7 T. L. R. 46.

Poor relief given to a man's wife or to his children under the age of sixteen, not being blind or deaf and dumb, is to be considered as given to him. 4 & 5 Will. 4, c. 76, s. 56. But relief given to a man's father does not disqualify him. *Reg.* v. *Ireland*, (1868) L. R. 3 Q. B. 130; 37 L. J. Q. B. 73; 9 B. & S. 19; 17 L. T. 466; 16 W. R. 358; 32 J. P. 726; *Doherty* v. *Chambers*, (1887) 22 L. R. Ir. 434.

An exemption from the disqualification which attaches to the receipt of relief has been provided by various statutes in the case of the receipt of medical or surgical assistance at the expense of the poor rate. See s. 33 (4), *post*, with regard to the receipt of such assistance from the trustees of the municipal charities and the removal of a person to a hospital at the cost of a local authority. Section 26 of the Vaccination Act, 1867 (30 & 31 Vict. c. 84), provided that vaccination and surgical or medical assistance incident thereto performed or rendered by a public vaccinator should not be considered as parochial relief, alms, or charitable allowance so as to disqualify; and now by s. 2 of the Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), a person is not to be deprived of any right to be registered or to vote as a burgess by reason of the fact that he has received for himself or for any member of his family any medical or surgical assistance or any medicine at the expense of any poor rate. The term "medical or surgical assistance" is defined by s. 4 as including all medical and surgical attendance and all matters and things supplied

by or on the recommendation of the medical officer having authority to give such attendance and recommendation at the expense of any poor rate. The Act has been held to apply to attendance upon a voter's wife during her confinement where the guardians had given an order for the attendance of their medical officer, but the woman was in fact attended by a midwife sent by the relieving officer. *Honeybone* v. *Hambridge*, (1886) 18 Q. B. D. 418; 56 L. J. Q. B. 46; 56 L. T. 365; 35 W. R. 520; 51 J. P. 103; Fox & Smith 26; 3 T. L. R. 153. Where a voter's wife had been during the whole of the qualifying period maintained as a pauper patient in the county lunatic asylum, and no contribution had been made by him towards her maintenance, it was held to be a question of fact for the revising barrister to decide whether the relief, which was in the first instance medical relief, had not become ordinary relief, so as to preclude the application of the Act. *Kirkhouse* v. *Blakeway*, [1902] 1 K. B. 306; 71 L. J. K. B. 130; 86 L. T. 19; 50 W. R. 206; 66 J. P. 38; 1 Smith 281; 18 T. L. R. 182. See also s. 2 of the Local Education Authorities (Medical Treatment) Act, 1909 (9 Edw. 7, c. 13), as to the parents of children attending a public elementary school for whom medical treatment has been provided by the local education authority.

A similar exemption is provided in the case of persons admitted to an infectious diseases hospital by s. 80 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and s. 23 of the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68). See also the Cleansing of Persons Act, 1897 (60 & 61 Vict. c. 31).

As to the exemption of a person whose child has been taught in a public or endowed school, see s. 33 (4), and the note thereto, *post*.

(*m*) **Disentitled under any Act of Parliament.**—A person convicted of treason or felony, for which he is sentenced to death, penal servitude, or a term of imprisonment with hard labour or exceeding twelve months, is disqualified by s. 2 of the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), for exercising any parliamentary or municipal franchise until he has suffered the punishment or has received a free pardon.

A person convicted on indictment of any corrupt practice at a parliamentary election is disqualified for seven years by s. 6 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), *post*, p. 353, for being registered as an elector or voting at any parliamentary election or at any election for a public office as defined by s. 64 of that Act, *post*, p. 363, which includes the office of mayor, alderman, or councillor of a borough. A person convicted of an illegal practice at a parliamentary election is disqualified for five years by s. 10 of the same Act, *post*, p. 355, for being registered as an elector or voting at any election, whether a parliamentary election or an election for a public office, held for or within the county or borough in which the illegal practice was committed. And by s. 38 (5) of the same Act, *post*, p. 405, a person who is reported by an election court to have been guilty of any corrupt or illegal practice at a parliamentary election is subject to the same incapacity as if he had at the date of the election been convicted of the offence of which he is reported to have been guilty. As regards corrupt and illegal practices committed in reference to a municipal election, a similar disqualification is imposed by ss. 2, 7, and 23 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), *post*, p. 377. See also ss. 3 and 8 of that Act as to the disqualification of a candidate reported guilty of such practices. The provisions of that Act are extended by s. 36 to elections for the offices of members of an urban district council, improvement commissioners, a board of guardians, and a school board. As regards corrupt practices at a school board election, see s. 91 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75). School boards, however, are now no longer elected. See s. 5 of Education Act, 1902, *post*, p. 597.

Any person who commits an offence against s. 1 of the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), which is aimed against bribery and corruption of and by members, officers, or servants of a municipal corporation or other public body as defined by the Act, is liable on a second conviction to be adjudged to be incapable for seven years of being registered as an elector or voting either at a parliamentary election or at an election of members of any public body as so defined, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting are made applicable to such offences. See this Act, *post*, p. 482.

Police constables were formerly disqualified for voting at municipal elections by

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19 & 20 Vict. c. 69, s. 9, and 22 & 23 Vict. c. 32, s. 3, *post*, pp. 242, 245; but their disabilities have now been removed by the Police Disabilities Removal Act, 1893 (56 & 57 Vict. c. 6), *post*, p. 528.

As to the right of a returning officer to vote at a municipal election, see s. 58 (5), *post*. The provision in s. 2 of the Ballot Act, 1872, *post*, p. 258, by which a returning officer at a parliamentary election is prohibited from voting except where there is an equality of votes, does not apply to a municipal election. See Schedule 3, Part III., r. 1, *post*, p. 178. Persons employed for payment at a municipal election, such as clerks and messengers and polling agents, may not vote. 47 & 48 Vict. c. 70, s. 13, *post*, p. 383.

Bankruptcy does not of itself disqualify a person for being enrolled as a burgess, but it will in most cases prevent him from fulfilling the requirement as to the occupation of qualifying property.

A woman is not disqualified by her sex for enrolment as a burgess, but the common law disqualification of a married woman still remains. See s. 63, and the note to that section, *post*, p. 65.

County Councils.—The qualification of a county elector is the same as that of a burgess. The County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 2 provides that—

"(1) For the purpose of the election of county authorities in England, the burgess qualification, that is to say, the qualification enacted by s. 9 of the Municipal Corporations Act, 1882, shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification shall be entitled to be registered under this Act as a county elector in the parish in which the qualifying property is situate.

"(2) Sections 9, 31, 33, and 63 of the Municipal Corporations Act, 1882, and any enactments of that or any other Act affecting the same, shall extend to so much of any county as is not comprised within the limits of a municipal borough in like manner as if they were herein re-enacted, with the substitution of "county" for "borough" and of "county elector" for "burgess," and with the other necessary modifications."

An alternative qualification both for county electors and for burgesses which is known as the "ten pounds occupation qualification" has been introduced by s. 3 of the County Electors Act, 1888, which is set out, *ante*, p. 7.

In the county of London a person who is qualified in all respects except that of residence, and who is resident beyond seven miles but within fifteen miles of the county is entitled to be registered as a county elector. Local Government Act, 1888, s. 77. In any other county such persons are to be placed in the non-resident list under s. 49, *post*.

Council; Mayor, Aldermen, and Councillors.

Constitution of council.

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.

(2.) The council shall consist of the mayor, aldermen, and councillors.

The powers of a municipal corporation are not limited to those which are given to them by this Act. They may have other powers which are vested in them by charter, by prescription, or by other Acts of Parliament. See *Attorney-General* v. *Manchester Corporation*, *post*, p. 184. As to the exercise of the powers conferred by the Public Health Acts, see the note to s. 8, *ante*. See also ss. 26, 27, 33, 34, and 62 of the Local Government Act, 1894, *post*, pp. 555—566, for the powers which are transferred to or vested in town councils by that Act.

The council is not incorporated by the Act. Although the corporation act by the council, they bear the name which is given to them by s. 8, and not that of the council. Property acquired by the council should be conveyed to the corporation. See the note to s. 8, *ante*.

As to the mode of service of a writ of summons on a corporation, see R.S.C., O. 9, R. 8.

County Councils.—A county council consists of the chairman, county aldermen, and county councillors. Local Government Act, 1888, ss. 1, 2 (2) (*c*), (5).

Qualification of councillor.

11.—(1.) The councillors shall be fit persons elected by the burgesses.

(2.) A person shall not be qualified to be elected or to be a councillor (*a*), unless he—

(a) Is enrolled and entitled to be enrolled as a burgess (*b*) ; or

(b) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made (*c*) ; and

(c) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value (*d*) of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor ; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification (*e*).

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner (*f*).

(*a*) The effect of this section may be stated as follows :—

(1) Any person is qualified to be elected and to be a councillor if at the time of his election his name was on the burgess roll and he then possessed either the old burgess qualification or the ten pounds occupation qualification (see note (*b*) to s. 9, *ante*). In that case no property qualification is required, and he will not cease to be qualified to be a councillor if he ceases after his election to be enrolled as a burgess or to possess the qualification for enrolment as a burgess. If, however, he ceases for six months to reside in the borough, he will lose his qualification as a councillor unless he also possessed at the time of his election the property qualification mentioned in sub-s. (2) (*c*) and continues to possess it.

(2) A person who is qualified for enrolment as a burgess in every respect except that of residence, and who is resident beyond seven miles but within fifteen miles of the borough and is entered in the separate non-resident list, is qualified to be elected and to be a councillor if he possesses the property qualification mentioned above, but not otherwise. If at any time after his election he ceases to reside within the distance mentioned or to be entered in the separate non-resident list or to hold the property qualification, he will cease to be qualified to be a councillor.

The qualification which is required by this section applies also to the aldermen, mayor, and elective auditors (see ss. 14, 15, and 25, *post*), but it does not apply to those members of the councils of the city of Oxford and the borough of Cambridge who are elected to represent the Universities under the provisions of their local Acts of Parliament. In the case of Oxford, nine out of the total number of forty-five councillors represent the University, three being elected by Convocation and six by the heads of colleges and halls. These councillors must be members of the University (whether clerks in holy orders or not) of the degree of Master of Arts, Bachelor of Civil Law, or Bachelor of Medicine, or any superior degree. No further qualification is required. 52 & 53 Vict. c. xv. In the case of the borough of Cambridge, six out of the thirty-six councillors are elected to represent the University, two by the Senate and four by the colleges and halls of the University. Every member of the

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Senate (whether a clerk in holy orders or the regular minister of a dissenting congregation or not) who is resident in a college or hall of the University situated within the borough, or is resident in the borough, and every person who is enrolled and entitled to be enrolled as a burgess of the borough, is qualified to be elected a councillor to represent the University. 52 & 53 Vict. c. cxvi.

(*b*) As to the qualification for enrolment as a burgess, see s. 9, *ante*, and the notes thereto. The main elements of that qualification are (1) occupation of a building of any value or of land of the yearly value of ten pounds in the borough; (2) residence in or within seven miles of the borough; (3) rating and payment of rates.

Under this qualification a councillor must not only be enrolled as a burgess but must be entitled so to be enrolled, *i.e.*, he must possess the qualification of a burgess. The fact that a person's name is on the burgess roll is not conclusive as to his right to be enrolled. *Middleton* v. *Simpson*, (1880) 5 C. P. D. 183; 49 L. J. C. P. 312; 42 L. T. 55; 28 W. R. 629; 44 J. P. 251. See also *Unwin* v. *McMullen*, [1891] 1 Q. B. D. 694, cited in note (*d*) to s. 9, *ante*. But a person whose name is on the burgess roll is not liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled. Section 41 (2), *post*.

The burgess roll is completed every year on or before the 20th October, and comes into operation on the 1st November, which is the ordinary day of election of councillors. Sections 45 (2), 52, *post*. A candidate's name must be on the roll which is in force at the time of the election, but it need not also be on that which was in force at the time of the nomination. Schedule 3, Part II., Rule 18, *post*; and see *Budge* v. *Andrews*, (1878) 3 C. P. D. 510; 47 L. J. C. P. 586; 39 L. T. 166; 42 J. P. 744.

(*c*) The separate non-resident list is directed to be made by s. 49, *post*, and to be placed at the end of the burgess roll. This list comprises the names of persons who are qualified to be enrolled as burgesses in all respects except that of residence, and who are resident beyond seven but within fifteen miles of the borough. As to the measurement of the distance, see s. 231, *post*.

(*d*) Annual value here means rateable value. *Baker* v. *Marsh*, (1854) 4 E. & B. 144; 24 L. J. Q. B. 1; 3 W. R. 13; 1 Jur. (N. S.) 44; 24 L. T. (O. S.) 72; 3 Com. Law Rep. 343; 19 J. P. 117. Section 30 (9), *post*, provides that the division of a borough into a greater number of wards is not to affect the qualification of councillors.

(*e*) By s. 51, *post*, any person whose name is on the burgess roll is entitled to vote, whether he is entitled to be enrolled or not; but he is not qualified to elect within the meaning of this sub-section unless he is not only enrolled but entitled to be enrolled by possessing the burgess qualification. *Flintham* v. *Roxburgh*, (1886) 17 Q. B. D. 44; 55 L. J. Q. B. 472; 54 L. T. 797; 34 W. R. 543; 50 J. P. 311.

A woman, if unmarried, is not disqualified for election as a councillor, but a married woman cannot be elected because she is not entitled to be enrolled as a burgess, as required by this section. An unmarried woman is entitled by virtue of s. 63, *post*, to be enrolled as a burgess, but that section has not removed the common law disqualification which arises from marriage. See *Reg.* v. *Harrald*, (1872) L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. (N. S.) 616; 20 W. R. 328; 36 J. P. 438. Section 43 of the Local Government Act, 1894, *post*, p. 561, which enables a married woman to be registered as a parochial elector in a metropolitan borough, does not apply to the enrolment of burgesses in a borough under the Act of 1882.

An unmarried woman, though entitled to be enrolled as a burgess, formerly remained incapable at common law of holding the office of councillor. *Beresford-Hope* v. *Lady Sandhurst*, (1889) 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. 150; 37 W. R. 548; 53 J. P. 805; 5 T. L. R. 472; *De Souza* v. *Cobden*, [1891] 1 Q. B. 687; 60 L. J. Q. B. 533; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565; 7 T. L. R. 441. This disqualification has now been removed by the Qualification of Women (County and Borough Councils) Act, 1907 (7 Edw. 7, c. 33), *post*, which provides that a woman shall not be disqualified by sex or marriage for being elected or being a councillor or alderman of the council of any county or borough (including a metropolitan borough).

The qualification which is enacted by sub-section (3) is only required to exist at the time of election. A councillor, therefore, who is elected on this qualification will not become disqualified for holding his office if he subsequently loses the burgess qualification, but if he ceases for six months to reside in the borough he will cease to be qualified by virtue of sub-s. (4).

(*f*) It is to be observed that a person who is qualified under sub-s. (3) will lose his

qualification if he ceases for six months to reside in the borough. Residence within seven miles of the borough, which qualifies for enrolment as a burgess under s. 9 (2) (c), is not sufficient in this case.

County Councils.—The council of a county and the members thereof are to be constituted and elected as the council of a borough divided into wards (see s. 30, *post*), subject to the provisions of the Local Government Act, 1888. See s. 2 of that Act, *post*. The persons entitled to vote at an election of county councillors are in a borough the burgesses enrolled under this Act, and elsewhere the persons registered as county electors under the County Electors Act, 1888. Local Government Act, 1888, s. 2 (4).

A person is qualified for election as a county councillor if he is entered in the separate non-resident list in any borough or in the similar list which is made for the county. Local Government Act, 1888, s. 75 (12). See the notes to s. 49, *post*.

A person who is a peer owning property in the county or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county is qualified to be a county alderman or a county councillor although he does not possess the qualification which is required by the Act of 1882. Local Government Act, 1888, s. 2 (2) (*b*).

In the case of the London County Council a parochial elector is entitled to vote at the election of a county councillor in the same manner as a county elector. London County Council Electors Qualification Act, 1900 (63 & 64 Vict. c. 29). The effect of this provision is to enable married women, lodgers, and persons possessing the service franchise to vote at such elections.

Disqualifications for being councillor.

12.—(1.) A person shall be disqualified for being elected and for being a councillor (*a*), if and while he—

(a) Is an elective auditor (*b*) or a revising assessor (*c*), or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council (*d*); or

(b) Is in holy orders, or the regular minister of a dissenting congregation (*e*); or

(c) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council (*f*):

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

(a) Any lease, sale, or purchase of land, or any agreement for the same (*g*); or

(b) Any agreement for the loan of money, or any security for the payment of money only (*h*); or

(c) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(d) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or

(e) Any railway company, or any company incorporated by Act of Parliament or Royal charter, or under the Companies Act, 1862 (*i*). 25 & 26 Vict. c. 89.

(*a*) There are other disqualifications for the office of councillor under the provisions of various Acts of Parliament. A councillor must possess the burgess qualification (see note (*a*) to s. 11); any person, therefore, who is disqualified for enrolment in the burgess roll is disqualified also for holding the office of councillor. As to such disqualifications, see note (*m*) to s. 9, *ante*. For the same reason infants, aliens, and persons in receipt of parochial relief are disqualified. As regards disqualification by bankruptcy or absence from the borough, see s. 39, *post*. Women were incapable at common law of holding the office of councillor, but the disqualification of unmarried

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women has been removed by statute. See note (*e*) to s. 11. An officer of the regular forces on the active list is disqualified by s. 146 of the Army Act (44 & 45 Vict. c. 58), amended by 52 & 53 Vict. c. 3, s. 6, but not an officer of the auxiliary forces. 44 & 45 Vict. c. 58, s. 181 (5). The recorder of a borough is disqualified by s. 163 (6), *post*, for being a councillor of the same borough. A mayor or an outgoing alderman is not disqualified for election as a councillor by the fact that he is *ex officio* returning officer; but if he stands as a candidate he must not act as returning officer. *Reg.* v. *Owens*, (1859) 2 E. & E. 86; 28 L. J. Q. B. 316; 33 L. T. 257; 7 W. R. 566; 23 Jur. 764; *Reg.* v. *White*, (1867) L. R. 2 Q. B. 557; 36 L. J. Q. B. 267; 16 L. T. (N. S.) 828; 15 W. R. 988; *Fanagan* v. *Kernan*, (1881) L. R. Ir. 8 C. P. 44.

It has been decided by the Court of Appeal that an alderman is not disqualified for election as a councillor, but if he accepts the office of councillor he thereby vacates that of alderman, the two offices being incompatible. *Reg.* v. *Mayor of Bangor*, (1886) 18 Q. B. D. 349; 56 L. J. Q. B. 326; 56 L. T. 434; 35 W. R. 158; 51 J. P. 51; 3 T. L. R. 176. No opinion was expressed on this point by the House of Lords in that case. *Pritchard* v. *Mayor of Bangor*, (1888) 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564. See also *Reg.* v. *Douglas*, *post*, p. 555.

The disqualifications enacted by this section apply also to the offices of alderman, mayor, and elective auditor. See ss. 14, 15, and 25, *post*.

Any member of a municipal corporation who authorises any payment out of the corporate funds of expenses occasioned by a parliamentary election is for ever disqualified by s. 124, *post*, for holding any office in the same corporation.

A person who acts in a corporate office when disqualified is liable to a penalty, but his acts and proceedings are not invalidated. Sections 41, 42, *post*.

(*b*) See s. 25, *post*. The disqualification does not apply to the mayor's auditor, who must be a member of the council.

(*c*) This office is now obsolete. See the note to s. 29, *post*.

(*d*) The officers who are disqualified by this section include the town clerk (s. 17), treasurer (s. 18), coroner (s. 171), deputy coroner (s. 172), registrar of the borough civil court (s. 178), and the clerk of the peace in a borough having a separate court of quarter sessions (s. 164). The recorder is disqualified by s. 163. A partner of any of these officers is not disqualified unless he has a share or interest in the employment under clause (c). The clerk to the borough justices is not disqualified for election as a councillor, but if he accepts that office he is debarred by s. 159, *post*, from continuing to hold the office of clerk to the justices.

If the office is one out of which a profit might be made, the fact that the holder of the office does not receive the profit but allows it to be taken by someone else appears to be immaterial. See *Delane* v. *Hillcoat*, (1829) 9 B. & C. 310; 4 Man. & Ry. 175; 8 L. J. (O. S.) K. B. 4; 32 R. R. 696.

Under s. 46 of the Local Government Act, 1894, which disqualifies a person who holds a paid office under a district council for being a member of that council, it has been held that a distress committee established for a borough or urban district under the Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18) is a committee of the borough or district council; and that a person who holds a paid office under a distress committee in an urban district holds a paid office under the district council. *Crump* v. *Lewis*, [1908] 1 K. B. 858; 77 L. J. K. B. 478; 98 L. T. 864; 72 J. P. 149; 6 L. G. R. 588; 24 T. L. R. 321.

(*e*) This disqualification does not apply to those members of the councils of the city of Oxford and the borough of Cambridge who are elected to represent the Universities. See note (*a*) to s. 11. A person in holy orders can get rid of his disqualification by resigning his office and executing a deed of relinquishment in the form prescribed by the second schedule to the Clerical Disabilities Act, 1870 (33 & 34 Vict. c. 91), which is made applicable to this section by s. 242 and Schedule 9, Part 2, *post*.

A person who temporarily supplied the place of the regular minister of a dissenting congregation, without any salary or contract, was held not to be disqualified. *Reg.* v. *Oldham*, (1869) L. R. 4 Q. B. 290; 38 L. J. Q. B. 125.

(*f*) The following cases, which have been decided for the most part under similar provisions in other Acts of Parliament, show the manner in which the expression "any share or interest in a contract" or similar words have been construed by the Courts. It is to be observed, however, that the language of such provisions is not

always identical with that of the text. The object of such provisions is to prevent the conflict between interest and duty that might otherwise inevitably arise. *Nutton* v. *Wilson, infra.*

A contract to bind the books and documents of a corporation was held to disqualify, although the contract could not be enforced because it was not under seal. *Reg.* v. *Francis,* (1852) 18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1045.

Where an alderman of a borough supplied ironwork in the ordinary course of trade to contractors, who used it in carrying out a contract to erect iron railings for the council, it was held that this was not sufficient to give him a share or interest in the contract made with the council. *Le Feuvre* v. *Lankester,* (1854) 3 E. & B. 530; 23 L. J. Q. B. 254; 22 L. T. (O. S.) 282; 18 Jur. 891; 2 W. R. 307; 18 J. P. 198. This case may perhaps be distinguished from *Tomkins* v. *Jolliffe* and *Nutton* v. *Wilson, infra,* on the ground that there was no sub-contract by the defendant to do part of the work contracted for, and that there was no evidence that he knew of the purpose for which the goods were to be used.

A person who had from time to time supplied small quantities of lime to commissioners on credit was held to be concerned in a contract with the commissioners. *Nicholson* v. *Fields,* (1862) 7 H. & N. 810; 31 L. J. Ex. 233; 10 W. R. 304.

A member of a school board was held to be disqualified under s. 34 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), where he had contracted with the returning officer to print the forms and documents required for a school board election, the work being paid for by the school board. *Tanfield* v. *Reynolds,* (1875) 39 J. P. 293.

A member of a local board, who received payment from the board in respect of the use of men and horses supplied by him at the request of the board's surveyor, was held to be concerned in a contract entered into by the board. *Fletcher* v. *Hudson,* (1881) 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. 125; 30 W. R. 349; 46 J. P. 372.

It is immaterial whether the contract was made before or after the person who is interested in it became a member of the council. Where a member of a vestry had before his election lent money to his brother in order to enable the latter to carry out a contract which he had entered into with the vestry, and had taken an assignment of the benefit of that contract by way of security for his loan, it was held that he was interested in the contract. *Hunnings* v. *Williamson,* (1883) 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T. 361; 32 W. R. 267; 48 J. P. 132.

A person may be interested in a contract as a sub-contractor. Thus where a local board contracted with an ironmonger for certain alterations to the gas fittings in the town hall, and the contractor employed the defendant, who was a builder and a member of the local board, to erect the scaffolding required for the work, it was held that the defendant was concerned in the contract made with the board. *Tomkins* v. *Jolliffe,* (1887) 57 J. P. 247. So where a member of a local board was employed by contractors to do part of certain works for which they had contracted with the board, it was held that he was concerned in the contracts entered into by the board. *Nutton* v. *Wilson,* (1889) 22 Q. B. D. 744; 58 L. J. Q. B. 443; 37 W. R. 522; 53 J. P. 644; 5 T. L. R. 439. And a member of a school board who supplied sand and gravel to a builder to be used in building a school which the builder had contracted to build for the board, was held to be concerned in work done under the authority of the board. *Barnacle* v. *Clark,* [1900] 1 Q. B. 279; 69 L. J. Q. B. 15; 81 L. T. 484; 48 W. R. 336; 64 J. P. 87. But the mere supply of materials by a councillor to a contractor who chooses to buy them from him does not disqualify him in the absence of any understanding or arrangement that he was to be the person to supply the materials for the original contract. *Norton* v. *Taylor,* [1906] A. C. 378; 75 L. J. P. C. 79; 94 L. T. 591; 70 J. P. 433; 22 T. L. R. 450.

A local authority entered into contracts for sewering and paving new streets, by which it was provided that the contractors should pay the local authority's surveyor, in respect of bills of quantities prepared by him, a percentage on the amount payable to them under the contracts. It was held that the surveyor was interested in the contracts, although he was not a party to them. *Whiteley* v. *Barley,* (1888) 21 Q. B. D. 154; 57 L. J. Q. B. 643; 60 L. T. 87; 36 W. R. 823; 52 J. P. 595; 4 T. L. R. 585.

The defendant and his partner had contracted with the corporation to do certain works. Before the defendant's election as a councillor the partnership was dissolved, and the defendant assigned to his partner all his interest in the contracts, which were not completed at the date of his election. The corporation did not assent to

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the assignment or release the defendant from his contracts. It was held that he was disqualified because he remained liable under his contracts. *Cox* v. *Ambrose*, (1890) 60 L. J. Q. B. 114; 55 J. P. 23; 7 T. L. R. 59. See also *Reg.* v. *Franklin*, (1872) 6 Ir. R. C. L. 239.

A person who at the time of his election as a councillor held the appointment of chemist to the council, and who after his election supplied a member of the fire brigade with four pennyworth of oil on behalf of the council, was held to be disqualified. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499; 38 Sol. J. 309; 10 T. L. R. 344. In *Walsh* v. *Grimsley*, The Times, November 30th, 1900, a building contract which was ostensibly made with the defendant's sons was held to have been in fact made with him.

It is doubtful whether provisions such as that in the text are intended to apply to the casual purchase from a member of the council of trifling matters, such as a paint brush or a few nails, which are paid for over the counter. Possibly the maxim *de minimis non curat lex* would be held to be applicable in such a case. *Nutton* v. *Wilson*, *ante*, p. 23, per Lopes, L.J.; *Woolley* v. *Kay*, (1856) 1 H. & N. 307; 25 L. J. Ex. 351; 20 J. P. 776; *Lewis* v. *Carr*, *infra*. See, however, *Nell* v. *Longbottom*, *supra*.

By s. 224, *post*, an action to recover a penalty from any person for acting in a corporate office when disqualified must be commenced within three months after the cause of action arose. In the case of a continuing contract the disqualification arises *de die in diem*. *Reg.* v. *Francis*, *supra*; *Todd* v. *Robinson*, (1884) 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. 120; 49 J. P. 278; 1 T. L. R. 44. The disqualification, however, lasts only so long as the interest in the contract continues. *Lewis* v. *Carr*, (1876) 1 Ex. D. 484; 46 L. J. Ex. 314; 36 L. T. (N. S.) 44; 24 W. R. 940; 40 J. P. 692. Where a contractor has wholly performed his part of the contract and nothing remains to be done under it except that he is to receive payment, his disqualification comes to an end. Thus where by agreement between the trustees of a non-provided school and the town council who were liable to maintain it, the coal required for heating the building was purchased by the trustees, and the town council paid them two-thirds of the cost, it was held that the defendant, who supplied the coal and who was a member of the council and one of the trustees of the school, had an interest in the contract made between the council and the trustees, but that as he had performed his part of the contract he had ceased to be disqualified, although he had not received payment for the coal which he had supplied. *Cox* v. *Truscott*, (1905) 92 L. T. 650; 69 J. P. 174; 3 L. G. R. 431; 21 T. L. R. 319. See also *Le Feuvre* v. *Lankester*, *ante*, p. 23; *Royse* v *Birley*, (1869) L. R. 4 C. P. 296; 38 L. J. C. P. 203; 20 L. T. (N. S.) 786; 17 W. R. 827; *Ford* v. *Newth*, *infra*; *Re Bodega Company*, [1904] 1 Ch. 276; 73 L. J. Ch. 198; 89 L. T. 694; 52 W. R. 249; 11 Manson 95. In *Cory* v. *Harrison*, [1906] A. C. 274; 75 L. J. Ch. 714; 93 L. T. 818, it was held that where a person had sold his business on credit, the mere fact that he remained a creditor of the purchaser did not give him an interest in the business within the meaning of a covenant not to be interested in a business of that kind. These decisions do not apply to the case of a member of a board of guardians who is disqualified under s. 46 of the Local Government Act, 1894, because that section does not contain any words limiting the disqualification to the period while the interest in the contract continues. *R.* v. *Rowlands*, [1906] 2 K. B. 292; 75 L. J. K. B. 501; 95 L. T. 502; 70 J. P. 463; 4 L. G. R. 983. It is to be observed that there is no provision in the text such as is contained in s. 39, *post*, to the effect that a person who becomes disqualified shall cease to hold his office. As to the effect of such a provision, see *Fletcher* v. *Hudson*, (1881) 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. 125; 30 W. R. 349; 46 J. P. 372.

A candidate for election as a councillor who at the time of his nomination was interested in a contract made with the corporation was held to be disqualified for nomination as well as for election, although he might have got rid of his disqualification between the time of the nomination and the election. *Harford* v. *Linskey*, [1899] 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 47 W. R. 653; 63 J. P. 263; 15 T. L. R. 306. The respondent tendered to the corporation for the supply of certain goods as required during the ensuing year ending December 31st, and his tender was accepted. Before the expiration of the year and before the day fixed for the nomination of candidates for election as councillors, he applied to the finance committee to be relieved from his tender because he intended to offer

himself as a candidate at the election, and the committee released him subject to the approval of the council. Such approval was subsequently given, but not until after the nomination day. It was held that the acceptance of the tender constituted a contract by which the corporation were bound to order from the respondent such goods as they required, so that he was disqualified at the time of the nomination by his interest in the contract; and that the subsequent ratification by the council of the resolution passed by the committee had no retrospective operation so as to remove his disqualification at that date. *Ford* v. *Newth*, [1901] 1 Q. B. 683; 70 L. J. K. B. 459; 84 L. T. 354; 49 W. R. 345; 65 J. P. 391; 17 T. L. R. 325.

As to the effect of a contract which purports to be made by an agent on behalf of a councillor, but is in fact made without his knowledge and contrary to his express directions, see *Miles* v. *McIlwraith*, (1883) 8 A. C. 120; 52 L. J. P. C. 17; 48 L. T. 689; 31 W. R. 591.

Under a similar provision in s. 193 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), relating to officers and servants of a local authority, it has been held that the object of the enactment is to prohibit any such contract from being entered into, so that if an officer or servant is interested in it the contract is void altogether, although if he became interested in the contract after it had been entered into, the contract would probably not be avoided. *Mellis* v. *Shirley Local Board*, (1885) 16 Q. B. D. 446; 55 L. J. Q. B. 143; 53 L. T. 810; 34 W. R. 187; 50 J. P. 214; 2 T. L. R. 360. The principle of that decision appears to be applicable to the text, although the Act of 1882 does not expressly prohibit a councillor from having any interest in a contract made with the council. See also *Read* v. *Punter*, (1898) 14 T. L. R. 455. In *City of London Electric Lighting Co.* v. *London Corporation*, *infra*, note (*i*), it was held that a contract which was valid in its inception was not avoided by the fact that persons who were prohibited from being interested in it subsequently acquired an interest in it.

(*g*) Under a similar provision in the Public Health Act, 1875, a member of a local board was held not to be disqualified by the fact that a sewage farm had been leased by the board to him, with covenants on their part to supply sewage and on his part to use it on the land. *Reg.* v. *Gaskarth*, (1880) 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T. 688; 28 W. R. 596; 44 J. P. 507. The lease of a building to the council for the purposes of a polling station at an election of councillors is a lease of land within the exception in the text. *Nell* v. *Longbottom*, *ante*, p. 24.

It will be noticed that sub-s. (2) does not prevent a person who is interested in any of the matters which are made exceptions to the rule as to disqualification from voting when any question relating to it is before the council. This, however, is prohibited by s. 22 (3), *post*.

(*h*) An alderman contracted with the town commissioners to construct certain waterworks. Before the works were completed the contract was given up by deed, on the terms that the alderman should be paid a certain sum if the works were either completed or abandoned by the commissioners. It was held that the deed was a security for the payment of money only. *Le Feuvre* v. *Lankester*, *ante*, p. 23.

(*i*) The words "or any society registered under the Industrial and Provident Societies Acts, 1893 and 1895," are added at the end of this clause by the Municipal Corporations Amendment Act, 1906 (6 Edw. 7, c. 12), *post*, p. 210.

The reference to the Companies Act, 1862, is now to be construed as a reference to the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69). As to the interest of a shareholder of a company in contracts made with the company, see *Todd* v. *Robinson*, (1884) 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. 120; 49 J. P. 278; 1 T. L. R. 44; *City of London Electric Lighting Co.* v. *London Corporation*, [1903] A. C. 434; 72 L. J. K. B. 737; 89 L. T. 310; 2 L. G. R. 93; 19 T L. R. 694.

The position of a director or other officer of a limited company is not expressly dealt with by this Act. The interest which a director as such has in a contract made with the company does not appear to be exempted by sub-s. (2) (*e*). In the case of similar provisions in other Acts of Parliament the exemption is limited to the interest which a person has in the contract as a shareholder in a company (see *e.g.*, the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 28; Education Act, 1870 (33 & 34 Vict. c. 75), s. 34; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46). The New South Wales Act, 2 Edw. 7, No. 35, s. 24, which was construed in *Norton* v. *Taylor*, *ante*, p. 23, expressly excludes a director from the exemption which is provided in favour of shareholders.

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County Councils.—The disqualification of clerks in holy orders and other ministers of religion does not apply to a county council. Local Government Act, 1888, s. 2 (2).

A person is not disqualified for being a member of a county council by reason only of his being appointed returning officer by that council, except where he has directly or indirectly by himself or his partner received any profit or remuneration in respect of such appointment. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 6, *post*.

An officer of the regular forces is not disqualified for being elected or being a county councillor. Army (Annual) Act, 1891 (54 & 55 Vict. c. 5), s. 8.

In the case of a county council a further exemption from disqualification has been introduced by s. 5 of the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), which provides that no person shall be disqualified for being elected or for being a member of a county council by reason only of his having any share or interest in any contract with such county council for the supply from land of which he is owner or occupier of stone, gravel, or other materials for making or repairing highways or bridges, provided that no such share or interest in any contract shall exceed the amount of £50 in any one year.

Term of office and rotation of councillors.

13.—(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

The ordinary day of election of councillors is the 1st of November (s. 52).

A person elected to fill a casual vacancy goes out of office at the time when the person in whose place he was elected would regularly have gone out of office (s. 40).

The retiring councillors are re-eligible unless disqualified to hold the office (s. 37).

Notwithstanding this section, the mayor and aldermen continue to be members of the council during their respective offices. See s. 38, *post*.

The provisions as to the election of councillors are contained in ss. 50—59, *post*.

In the case of a newly-created borough the number of councillors and the time for the retirement of the first councillors may be fixed by the charter (s. 212).

County Councils.—County councillors are elected for a term of three years and then retire together and their places are filled by a new election. Local Government Act, 1888, s. 2 (2) (*d*). The ordinary day of election of county councillors is now such day between the 1st and 8th of March as the council may fix, and if no date is so fixed, the 8th of March. The ordinary day of retirement of county councillors is the 8th of March in every third year, and on that day the county councillors then in office are to retire together and their places are to be filled by the newly-elected councillors who are to come into office on that day. The ordinary day of election of councillors is to be fixed by the county council not less than six weeks before the ordinary day of retirement of county councillors. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1, *post*.

Number, term of office, and rotation of aldermen.

14.—(1.) The aldermen shall be fit persons elected by the council.

(2.) The number of aldermen shall be one third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election of aldermen in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

As to the election of aldermen, see s. 60. The ordinary day of election is the 9th of November, and the election is to be held at the quarterly meeting of the council. As to the term of office of a person elected to fill a casual vacancy, see s. 40. The qualification of a councillor is prescribed by s. 11, *ante*. As to disqualifications, see s. 12.

An alderman who is elected to and accepts the office of councillor vacates his office of alderman, the two offices being incompatible. *Reg.* v. *Mayor of Bangor*, *ante*, p. 22.

An outgoing alderman is re-eligible unless disqualified (s. 37).

In the case of the council of the city of Oxford, three out of the fifteen aldermen are elected by councillors and aldermen representing the University. Such aldermen must either be councillors representing the University, or be qualified to be such councillors. 52 & 53 Vict. c. xv. Two of the twelve aldermen of the borough of Cambridge are elected from among the six councillors who are elected to represent the University under 52 & 53 Vict. c. cxvi. As to the qualification of such councillors, see note (*a*) to section 11, *ante*, p. 19.

In the case of a newly-created borough, the time for the retirement of the first aldermen may be fixed by the charter (s. 212).

County Councils.—The ordinary day of election of county aldermen is the 16th of March or such other day within ten days after the ordinary day of retirement of county councillors (*i.e.*, the 8th March) as the council of any county may from time to time fix for that county. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1, *post*. A county alderman may not, as such, vote in the election of a county alderman. Local Government Act, 1888, s. 2 (2) (c), *post*.

In the case of the London County Council the number of county aldermen is not to exceed one-sixth of the whole number of county councillors. Local Government Act, 1888, s. 40 (5).

Qualification, term of office, salary, precedence, and powers of mayor.

15.—(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such (*a*).

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration (*b*).

(4.) He may receive such remuneration as the council think reasonable (*c*).

(5.) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough (*d*).

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835 (*e*), shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

(*a*) As to the time and mode of election of the mayor, see s. 61. An outgoing mayor is re-eligible unless disqualified (s. 37). As to the term of office of a person elected to fill a casual vacancy in the office of mayor, see s. 40. For the qualification and disqualifications of councillors, see ss. 11 and 12, *ante*.

(*b*) Where the mayor is one of the councillors who go out of office on the 1st of November, his office of councillor becomes vacant on that day, but he continues to be a member of the council *ex officio* until his successor has accepted office. See s. 38. The declaration of acceptance of office is required by s. 35.

(*c*) The council cannot make a colourable addition to the mayor's salary to be applied by him in making payments which would not be justified if they were made directly by the council; but they are entitled to make a reasonable addition to his

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salary if it is anticipated that his expenditure on festivities and so forth will be increased on account of some event of national importance, such as Queen Victoria's Jubilee or the Duke of York's marriage. *Attorney-General* v. *Mayor of Blackburn*, (1887) 57 L. T. 385; 3 T. L. R. 676; *Attorney-General* v. *Mayor of Cardiff*, [1894] 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. 591; 10 T. L. R. 420.

(*d*) By s. 155 (2), *post*, the mayor is to have precedence as a magistrate over the other justices acting in and for the borough, but not over the justices acting in and for the county in which the borough is situate, except when they are acting in relation to the business of the borough, nor over any stipendiary magistrate engaged in administering justice. The text gives him social precedence. *Ex parte Mayor of Birmingham*, (1860) 3 E. & E. 222; 30 L. J. Q. B. 2; 3 L. T. (N. S.) 270; 6 Jur. (N. S.) 1094; 9 W. R. 34.

The title of Lord Mayor is held by the mayors of London and York, and has recently been conferred by letters patent upon the chief magistrates of Manchester, Liverpool, Birmingham, Bristol, Sheffield, Leeds, Cardiff, Newcastle-on-Tyne, Bradford, and Norwich.

The mayors of Oxford and Cambridge have no precedence over the vice-chancellors of the Universities. Section 257 (2).

(*e*) For the boroughs named in the schedules to the Act of 1835, see p. 213. See also the saving in s. 250, *post*, for corporations existing at the commencement of the Act of 1882.

County Councils.—Sub-s. (5) of this section does not apply to the chairman of a county council. Local Government Act, 1888, s. 75 (16) (*b*).

Power of mayor to appoint deputy.

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice or in any judicial capacity.

No defect in the appointment of the deputy is to invalidate his acts (s. 237). By s. 67, if the mayor is dead, or is absent, or otherwise incapable of acting in the execution of his powers and duties as to elections under the Act, the council are to choose an alderman to execute such powers and duties in his place.

The deputy mayor is not entitled to act as chairman at a meeting of the council in the absence of the mayor, unless he is chosen for that purpose by the members of the council then present. Schedule 2, r. 9, *post*.

The mayor is a justice by virtue of his office. See s. 155, *post*.

County Councils.—This section does not apply to a county council. Local Government Act, 1888, s. 75 (16) (*b*). A county council may from time to time appoint a member of the council to be vice-chairman, to hold office during the term of office of the chairman, and subject to any rules made from time to time by the county council, anything authorized or required to be done by, to, or before the chairman may be done by, to, or before such vice-chairman. Local Government Act, 1888, s. 2 (6).

The London County Council have power to appoint any fit person to be deputy chairman, and to pay him such remuneration as they think fit. *Ibid.*, s. 88.

Officers of Council.

The town clerk and deputy.

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough (*a*).

(2.) The town clerk shall hold office during the pleasure of the council (*b*).

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(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence (*c*).

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure (*d*).

(6.) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk.

(*a*) The appointment should be made under seal. *Arnold* v. *Mayor of Poole*, (1842) 4 M. & G. 860; 5 Scott N. R. 741; 2 Dowl. (N. S.) 574; 12 L. J. C. P. 97; 7 Jur. 653; *Reg.* v. *Mayor of Stamford*, (1844) 6 Q. B. 433.

The town clerk cannot also hold the office of treasurer (s. 18) or elective auditor (s. 25).

(*b*) An officer who holds office during the pleasure of the council is liable to be dismissed at any time without notice and without any reason being assigned. See *Hayman* v. *Governors of Rugby School*, (1874) L. R. 18 Eq. 28; 43 L. J. Ch. 834; 30 L. T. (N. S.) 217; 22 W. R. 587; *Ex parte Richards*, (1878) 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. (N. S.) 684; 26 W. R. 695.

(*c*) As to the mode in which the twenty-one days are to be reckoned, see s. 230.

(*d*) No defect in the appointment of a deputy is to invalidate his acts (s. 237). If there is no town clerk and no deputy town clerk, or if they are incapable of acting, the mayor can appoint a person to perform the duties of the town clerk under s. 43.

By s. 20 the council are to allow the town clerk such remuneration as they think reasonable. He is not entitled to any remuneration in addition to his salary in respect of duties which are imposed upon him by statute. *Jones* v. *Mayor of Carmarthen*, (1841) 8 M. & W. 605. Where the terms of a town clerk's appointment provided that he should be paid a salary of one hundred guineas for attendance on the business of the council and the usual charges for bringing and defending actions, it was held that his salary covered all work that was done by him except bringing and defending actions. *Thomas* v. *Mayor of Swansea*, (1842) 2 Dowl. (N. S.) 470; 12 L. J. Ex. 73. A town clerk was appointed to act as professional adviser of the mayor and council, for which he was to be paid a salary and the usual professional charges for conducting actions and preparing conveyances, &c. It was held that he was entitled to the usual charges in respect of services performed in settling a matter in dispute where no action resulted. *Reg.* v. *Prest*, (1851) 16 Q. B. 32; 20 L. J. Q. B. 17; 15 Jur. 554. As to the town clerk's right to remuneration for work done in connection with the registration of voters, see 6 & 7 Vict. c. 18, s. 55, *post*, p. 230; 30 & 31 Vict. c. 102, s. 31, *post*, p. 342; 48 & 49 Vict. c. 15, s. 8.

A town clerk has a lien on papers of the corporation in respect of which he has done work as a solicitor, but not on such as he holds merely by virtue of his office. *R.* v. *Sankey*, (1836) 5 A. & E. 423.

County Councils.—This section does not apply to a county council. Local Government Act, 1888, s. 75 (16) (*e*). The corresponding officer of a county council is called the clerk of the county council, and his position is defined by s. 83 of the Local Government Act, 1888.

The treasurer.

18.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough.

(2.) The treasurer shall hold office during the pleasure of the council.

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4.) The offices of town clerk and treasurer shall not be held by the same person.

The treasurer cannot also hold the office of elective auditor (s. 25).

As to the liability of the treasurer to be dismissed without notice, and as to the mode of reckoning the twenty-one days, see notes (*b*) and (*c*) to s. 17.

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If there is no treasurer, or if the treasurer is incapable of acting, the mayor can appoint a person to act in his place under s. 43.

As to the position and duties of the treasurer, see the note to s. 142, *post*.

County Councils.—This section is not to apply to a county council unless they so resolve; but if the county council so resolve it is to supersede the existing enactments with respect to the county treasurer. Local Government Act, 1888, s. 75 (16) (*e*). The county treasurer is appointed by the county council who have power to remove him at pleasure and to pay him such salary as they think fit. 12 Geo. 2, c. 29, s. 11; 55 Geo. 3, c. 51, s. 17; Local Government Act, 1888, s. 3 (x).

The provisions relating to the county treasurer do not apply to county boroughs. Local Government Act, 1888, s. 34 (3).

Other borough officers.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed.

The appointment of these officers should be made under seal. *Smith* v. *Cartwright*, (1851) 6 Ex. 927; 20 L. J. Ex. 401. See also the cases cited in note (*a*) to s. 17.

Officers appointed under this section apparently hold office during the pleasure of the council, though there is no express provision to this effect as in the case of the officers appointed under ss. 17 and 18. See *Smyth* v. *Latham*, (1833) 9 Bing. 692; 3 Moore & Scott 251; 1 Cr. & M. 547; 3 Tyr. 509; 2 L. J. (N. S.) Ex. 241; *Hill* v. *The Queen*, (1854) 8 Moore P. C. 138.

As to the liability of such officers to be dismissed without notice, see note (*b*) to s. 17.

Security by and remuneration of officers.

20. The council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable.

Under the Act of 1835 the treasurer was appointed annually, but under a later Act he held office during the pleasure of the council. It was held that sureties who had entered into a bond for the performance of the treasurer's duties were not released by this change in the tenure of the office, where the terms of the bond contemplated such a change. *Oswald* v. *Mayor of Berwick*, (1856) 5 H. L. C. 856; *Mayor of Dartmouth* v. *Silly*, (1857) 7 E. & B. 97; 26 L. J. Q. B. 90; 28 L. T. (O. S.) 263; 5 W. R. 255; 3 Jur. (N. S.) 434. But see *Mayor of Cambridge* v. *Dennis*, (1858) E. B. & E. 660; 5 Jur. (N. S.) 265; 31 L. T. (O. S.) 199; 6 W. R. 653. Mere laches of the obligee, or a mere passive acquiescence by him in acts which are contrary to the conditions of a bond, is not sufficient in itself to relieve the sureties. Thus the defendants, who were sureties for the due performance of the duties of a rate collector, were held not to be discharged by the fact that the plaintiffs had acquiesced in an irregular mode of accounting followed by the collector. *Mayor of Durham* v. *Fowler*, (1889) 22 Q. B. D. 394; 58 L. J. Q. B. 246; 60 L. T. 456; 53 J. P. 374; 5 T. L. R. 238.

As to the remuneration of the town clerk, see note (*d*) to s. 17. The remuneration of officers appointed by the council is payable out of the borough fund under Schedule 5, Part I., *post*.

Accountability of officers.

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connexion with his office, shewing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(a) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(b) After three days' notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council or as they direct;

a court of summary jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

"Wilfully neglects" to deliver means "intentionally abstains from" delivering. See *Reg.* v. *Downes*, (1875) 1 Q. B. D. 25; 45 L. J. M. C. 8; 33 L. T. 675; 24 W. R. 278; 39 J. P. 760.

The expression "court of summary jurisdiction" is defined by s. 13 (11) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), *post*, p. 478. As to the respective jurisdictions of county and borough justices, see ss. 154–158, *post*, and *Re Justices of Gateshead*, (1836) 6 A. & E. 550, *n.*

As to the remedy by action, see *Mayor of Lichfield* v. *Simpson*, (1845) 8 Q. B. 65.

Meetings and Proceedings of Council; Committees.

Quarterly and other meetings of council; appointment of committees, minutes, &c.

22.—(1.) The rules in the Second Schedule shall be observed (*a*).

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval (*b*).

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest (*c*).

(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body (*d*).

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof (*e*).

(6.) Until the contrary is proved (*f*), every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted,

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and to have had power to deal with the matters referred to in the minutes.

(*a*) The schedules are to be read and to have effect as if they were part of the Act. Section 7 (4), *ante*. Schedule 2 contains provisions regulating the meetings and proceedings of the council. Rule 13 of that schedule empowers the council to make standing orders for the regulation of their proceedings and business.

(*b*) The delegation of any powers by the council to a committee does not preclude the council from resuming such powers at any time. See *Huth* v. *Clarke*, (1890) 25 Q. B. D. 391; 59 L. J. M. C. 129; 63 L. T. 348; 38 W. R. 655; 6 T. L. R. 373. The acts of a committee are not rendered invalid by the fact that the approval of the council was not obtained until after the acts were done. *Firth* v *Staines*, [1897] 2 Q. B. 70; 66 L. J. Q. B. 510; 76 L. T. 496; 45 W. R. 575; 61 J. P. 452; 13 T. L. R. 394. A contract which is required to be made under seal is not valid if it was made by a committee that was not appointed under seal and has not been ratified under seal by the corporation. *Mayor of Oxford* v. *Crow*, [1893] 3 Ch. 535; 69 L. T. 228; 42 W. R. 200. A committee appointed under this section must act as a body, and cannot delegate their powers to certain of their members to the exclusion of others. See *Cook* v. *Ward*, (1877) 2 C. P. D. 255; 46 L. J. C. P. 554; 36 L. T. 893; 25 W. R. 593; 41 J. P. 439. In the case of the watch committee the number of members must not exceed one-third of the council; but the requirement that the acts of every committee appointed under this section are to be submitted to the council for their approval does not appear to apply to the watch committee, which is appointed under s. 190, *post*. As to education committees, see s. 17 of the Education Act, 1902, *post*, p. 606.

(*c*) By s. 12, *ante*, a member of the council who has any share or interest in a contract made with the council is disqualified for holding his office, except in certain specified cases. That provision is not in any way modified by the text, which prohibits him from voting in the excepted cases when any matter in which he is interested comes before the council. *Cox* v. *Ambrose*, (1890) 60 L. J. Q. B. 114; 55 J. P. 23; 7 T. L. R. 59. Although as a rule there is nothing to prevent a candidate for election to an office from voting for himself, this section prohibits a member of the council from so doing where he is a candidate for the office of mayor and a salary is attached to that office. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499; 38 Sol. J. 309; 10 T. L. R. 344. No summary remedy is provided for a breach of this enactment, nor does it appear that the council have power to remove the offender from his office in such a case. See *Reg.* v. *Ryde Corporation*, (1873) 28 L. T. 629; 37 J. P. 725. The acts of the council are not invalidated by the fact that one of the members voted on a matter in which he was interested, if the council were not acting in a judicial capacity. See *Murray* v. *Epsom Local Board*, [1897] 1 Ch. 35; 66 L. J. Ch. 107; 75 L. T. 579; 45 W. R. 185; 61 J. P. 71; 13 T. L. R. 113. With regard to proceedings of a judicial character, see *Reg.* v. *London County Council*, [1892] 1 Q. B. 190; 61 L. J. M. C. 75; 66 L. T. 168; 40 W. R. 285; 56 J. P. 8; 8 T. L. R. 175.

(*d*) This provision does not override the requirement of Schedule 2, r. 10, *post*, which fixes the quorum of the council at one-third of the number of the members. As to the acts of persons who are disqualified or not qualified, see s. 42.

(*e*) As to the entering and signature of the minutes, see Schedule 2, r. 12. The forgery of the signature is punishable under s. 235. As to the right of a burgess to inspect the minutes, see s. 233.

(*f*) See *Reg.* v. *Thomas*, (1838) 8 A. & E. 183.

County Councils.—The provisions of this section have been modified in their application to county councils by s. 82 of the Local Government Act, 1888, which provides that a county council may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of any committee appointed by them, and as to the area (if any) within which it is to exercise its authority; and subject to such regulations the proceedings and quorum and the place of meeting whether within or without the county are to be such as the committee from time to time direct, and the chairman at any meeting of the committee is to have a second or casting vote. Every committee must report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct the acts and proceedings of the committee need not be submitted to the council for their approval.

Joint committees may be appointed by county councils under s. 81 of the Local Government Act, 1888, and the councils appointing such committees can jointly exercise the powers above mentioned. S. 82 (3).

As to the standing joint committee, see s. 30 of the Local Government Act, 1888. The acts and proceedings of that committee are not required to be submitted to the county council for their approval. *Ibid.*, s. 75 (16).

County councils are empowered by s. 28 (2) of the Local Government Act, 1888, to delegate to a committee any powers or duties which are transferred to them by or in pursuance of that Act.

Byelaws (*a*).

Power of council to make byelaws.

23.—(1.) The council may, from time to time, make such byelaws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough (*b*), and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same (*c*).

(2.) Such a byelaw shall not be made unless at least two-thirds of the whole number of the council are present (*d*).

(3.) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall (*e*).

(4.) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the byelaw or part thereof, the byelaw or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the byelaw shall not come into force, and in that case the byelaw shall not come into force until after the expiration of that enlarged time (*f*).

(5.) Any offence against such a byelaw may be prosecuted summarily (*g*).

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances (*h*).

38 & 39 Vict. c. 55.

(*a*) A byelaw may be described as a local law made by a body other than Parliament authorized thereto by statute, charter, or custom. A valid byelaw must be certain, general in its application, and reasonable; it must not be repugnant to the general law or *ultra vires*. The earlier decisions of the Courts with regard to the reasonableness of byelaws cannot be reconciled with one another, but the principle upon which this question is to be determined has now been settled by the case of *Kruse* v. *Johnson*, [1898] 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 46 W. R. 630; 42 Sol. J. 509; 62 J. P. 469; 19 Cox C. C. 103; 14 T. L. R. 416. The judgment of Lord Russell of Killowen, C.J., in that case, which was concurred in by six judges out of seven, contains the following passage: "Byelaws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, . . . ought to be supported if possible. They ought to be, as has been said,

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'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. . . . Courts of justice ought to be slow to condemn as invalid any byelaw so made under such conditions on the ground of supposed unreasonableness. . . . I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn byelaws made under such authority as these were made as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.' But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A byelaw is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the county, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of byelaws were to be determined by the opinion of judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle or definite standard by which reasonableness or unreasonableness may be tested." The principle laid down in *Kruse* v. *Johnson* was thus explained by Channell, J., in *White* v. *Morley*, [1899] 2 Q. B. 34; 68 L. J. Q. B. 702; 80 L. T. 761; 47 W. R. 583; 63 J. P. 550; 19 Cox C. C. 345; 15 T. L. R. 360: "I think that the principle of that decision is that where a thing is of such a character as that it can be a nuisance, it is to rest with the local authority to say whether it shall be considered to be a nuisance in the particular locality for which they have power to make byelaws. The Court can say whether it is reasonably possible for the prohibited act or thing to be a nuisance; but they cannot say whether it should or should not be forbidden in the particular locality." See also the judgment of Channell, J., in *Williams* v. *Weston-Super-Mare Urban District Council*, (1907) 98 L. T. 537; 72 J. P. 54; 6 L. G. R. 92. The earlier cases noted below are to be read in the light of the decision in *Kruse* v. *Johnson*. It is to be observed, however, as was pointed out by Mathew, J., who dissented from the rest of the Court in that case, that that decision is not binding on any other Divisional Court, and no appeal lies to the Court of Appeal in such cases.

A byelaw is not repugnant to the general law merely because it creates a new offence and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful, or if it adds something inconsistent with the provisions of a statute creating the same offence. *Gentel* v. *Rapps*, [1902] 1 K. B. 160; 71 L. J. K. B. 105; 85 L. T. 683; 50 W. R. 216; 66 J. P. 117; 18 T. L. R. 72.

A byelaw made by the London County Council imposing a penalty on any person who should sweep or remove from any shop, house, or vehicle into any street any wastepaper, shavings, or other refuse, or being a costermonger, newsvendor, or other trader, should throw down and leave in any street any wastepaper, shavings, or other refuse, was held not to be *ultra vires* or repugnant to s. 60 (3) of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), which imposes a similar penalty on any person who in any thoroughfare throws or lays any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish. *Batchelor* v. *Sturley*, (1905) 93 L. T. 539; 69 J. P. 398; 21 Cox C. C. 35; 3 L. G. R. 1056. See also *White* v. *Morley*, *post*, p. 36.

(*b*) The following are instances of byelaws for good rule and government or for the prevention and suppression of nuisances which have been held to be valid:

A byelaw made under s. 90 of the Municipal Corporations Act, 1835, imposing a penalty on any butcher, &c., who should expose for sale, or have in his possession with intent to sell, any unsound meat or other victuals. *Shillito* v. *Thompson*, (1875) 1 Q. B. D. 12; 45 L. J. M. C. 18; 33 L. T. 506; 24 W. R. 57.

A byelaw imposing a penalty on every person who should sound or play upon any

musical instrument in any street or near any house within the borough after having been required by any householder resident in such street or town or any police constable to desist from making such sounds or noises, either on account of illness of any inmate of such house or for any reasonable cause. *Reg.* v. *Powell*, (1884) 51 L. T. 92; 48 J. P. 740.

A byelaw imposing a penalty on any person who should blow any horn or trumpet or use any other noisy instrument to the annoyance of any of the inhabitants of the borough. *Booth* v. *Howell*, (1889) 53 J. P. 678; 5 T. L. R. 449.

A byelaw imposed a penalty on any person who should make any violent outcry, noise, or disturbance in the market or in any of the streets or public places of the borough, to the annoyance of the inhabitants of the borough. It was held that if the act complained of was of such a character as to be likely to annoy the inhabitants generally, it was none the less an offence under the byelaw because only one inhabitant was in fact annoyed. *Innes* v. *Newman*, [1894] 2 Q. B. 292; 63 L. J. M. C. 198; 70 L. T. 689; 42 W. R. 573; 58 J. P. 543; 10 T. L. R. 479.

A byelaw provided as follows: "No person shall in any house, building, garden, land, or other place abutting on or near to a street or public place, make use of any violent, abusive, profane, indecent, or obscene language, gesture, or conduct, to the annoyance of any person in such street or public place." It was held that the byelaw was reasonable, and that under it the respondent could be convicted of using obscene language in his house, which opened on to a street, to the annoyance of persons in the street. *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. 552; 61 J. P. 119; 18 Cox C. C. 467; 13 T. L. R. 121.

A byelaw imposing a penalty on any person who should frequent and use any street or other public place within the borough for the purpose of bookmaking or betting or wagering or agreeing to bet or wager with any person, was held valid. *Burnett* v. *Berry*, [1896] 1 Q. B. 641; 65 L. J. M. C. 118; 74 L. T. 494; 44 W. R. 512; 60 J. P. 375; 18 Cox C. C. 325; 12 T. L. R. 362. A similar byelaw was upheld in *Godwin* v. *Walker*, (1896) 60 J. P. 308; 12 T. L. R. 367; and in *Jones* v. *Walters*, (1898) 78 L. T. 167; 62 J. P. 374; 14 T. L. R. 265. The words "place of public resort" in a similar byelaw made under a local Act were held to apply to an uninclosed piece of private ground which was habitually used by the public although they had no right to go there. *Kilson* v. *Ashe*, [1899] 1 Q. B. 425; 68 L. J. Q. B. 286; 80 L. T. 323; 63 J. P. 325; 19 Cox C. C. 257; 15 T. L. R. 172. As to what is evidence of "frequenting" in such cases, see *Whickham* v. *Ashe*, The Times, Jan. 16th, 1897; *Airton* v. *Scott*, (1909) 100 L. T. 393; 73 J. P. 148; 25 T. L. R. 250.

The following byelaw was held to be valid: "No person shall to the annoyance or disturbance of residents or passengers keep or manage a shooting gallery, swing-boat, roundabout, or other like thing in any street or public place or on land adjoining or near to such street or public place, provided always that this byelaw shall not apply to any fair lawfully held." *Teale* v. *Harris*, (1896) 60 J. P. 744; 13 T. L. R. 15.

A byelaw which provided that "No person shall sound or play upon any musical or noisy instrument or sing in any public place or highway within fifty yards of any dwelling-house after being required by any constable or by an inmate of such house personally or by his or her servant to desist," was held to be valid, although it was not confined to cases in which annoyance was caused. *Kruse* v. *Johnson*, [1898] 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 46 W. R. 630; 42 Sol. J. 509; 62 J. P. 469; 19 Cox C. C. 103; 14 T. L. R. 416. See also *Brownscombe* v. *Johnson*, (1898) 78 L. T. 265; 62 J.P. 326; 19 Cox C. C. 25; 14 T. L. R. 328, an earlier decision on the same byelaw.

A local Act provided that the powers conferred by the Municipal Corporations Act to make and enforce byelaws for the good rule and government of the borough should be deemed to include the power to make and enforce byelaws to regulate, or if the council thought fit to prohibit, the use of any organ or other musical instrument worked by steam or other mechanical means, or any steam whistle or horn within the borough, except in the case of a locomotive or steam engine in use on a railway. A byelaw which prohibited the use of any organ or other musical instrument worked by steam or other mechanical means, or any steam whistle or steam horn within the borough, except a locomotive or steam engine in use on a railway, or a steam whistle or steam trumpet within the meaning of the Factories (Steam Whistles) Act, 1878, was held to be reasonable. *Mayor of Southend-on-Sea* v. *Davis*, (1900) 16 T. L. R. 167.

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A byelaw made by the London County Council which prohibited any person from frequenting and using any street or other public place for the purpose of betting, was held not to be void as being repugnant to the general law contained in s. 23 of the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), because the objects of the two provisions were distinct. The statute was aimed against the obstruction of the streets by three or more persons assembling together for the purpose of betting, whereas the byelaw made it an offence for any one person to frequent a street for the purpose of betting, whether other persons came to him there or not. The Court further expressed the opinion that it was competent to a local authority to make a byelaw prohibiting the use of their streets for the purpose of betting, apart from any question of obstruction, in the same way as the legislature has prohibited the use of a house for this purpose by the Betting Act, 1853 (16 & 17 Vict. c. 119). *White* v. *Morley*, [1899] 2 Q. B. 34; 68 L. J. Q. B. 792; 80 L. T. 761; 47 W. R. 583; 63 J. P. 550; 19 Cox C. C. 345; 15 T. L. R. 360. This decision, and that in *Burnett* v. *Berry*, *ante*, p. 35, were approved by the Court of Appeal in the case of *Thomas* v. *Sutters*, [1900] 1 Ch. 10; 69 L. J. Ch. 27; 81 L. T. 469; 48 W. R. 133; 63 J. P. 724; 19 Cox C. C. 418; 16 T. L. R. 7.

A byelaw provided as follows: "A person driving or having charge of any vehicle . . . shall from the end of the first hour after sunset to 2 o'clock a.m., except during such part, if any, of that period as shall be between the rising and setting of the moon, carry attached to such vehicle a lighted lamp or lighted lamps, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so as to afford adequate means of signalling the approach or position of the vehicle. Provided that where one lamp only is so carried, it shall be attached to the off or right side of the vehicle; and provided also that where such vehicle is carrying timber such person shall also carry attached at the end thereof a lamp or lamps so constructed as to exhibit a light or lights visible to persons overtaking such vehicle." This was construed as applying only to persons driving in public places, and was held to be a valid byelaw. *Walker* v. *Stretton*, (1896) 44 W. R. 525; 60 J. P. 313; 12 T. L. R. 363.

A byelaw providing that no person should drive or cause to be driven any timber carriage (whether laden or unladen) over any main road or other highway between sunset and sunrise unless it had lamps showing a bright and adequate light both to the front and rear of the carriage, was held valid. *Williams* v. *Groves*, (1896) 12 T. L. R. 450.

A byelaw was made by the London County Council in the following terms: "The owner of every vehicle which shall be driven or be upon any highway during the period between one hour after sunset and one hour before sunrise shall cause to be fixed outside such vehicle and on the right or off-side thereof a lamp which shall be so constructed and placed as to exhibit a white light visible in the direction in which the vehicle is proceeding and sufficient to afford adequate means of signalling the approach or position of the vehicle, and the person in charge of such vehicle shall during the said period keep such lamp properly lighted. This byelaw shall not apply to any vehicle which is by any statutory enactment or by any rule, regulation, or order made under any statutory enactment and for the time being in force required to carry a lamp outside such vehicle." This requirement was held to be reasonable and to be applicable to tramcars, in the absence of any regulations with regard to lights made under the Metropolitan Public Carriages Act, 1869 (32 & 33 Vict. c. 115), or the Tramways Act, 1870 (33 & 34 Vict. c. 78). *Adamson* v. *Miller*, (1900) 16 T. L. R. 185.

The carrying of lights by vehicles at night is now rendered compulsory by the Lights on Vehicles Act, 1907 (7 Edw. 7, c. 45). By s. 5 (3) of that Act, any byelaws made under this section with respect to the carrying of lights on vehicles cease to have effect so far as respects vehicles to which that Act applies, but that provision is not to affect any power under the Act of 1882 to make any fresh byelaw imposing obligations additional to those imposed by the Act of 1907 with respect to the carrying of lights on vehicles.

A sanitary authority were empowered by a local Act to make byelaws with reference to the sea beach and foreshore in their district. A byelaw prohibiting the sale of any commodity or article or the letting of any chair or seat except by direction of the sanitary authority or in such part of the sea beach or foreshore as they might appoint

for the purpose was held to be reasonable. *Gray* v. *Sylvester*, (1897) 46 W. R. 63; 61 J. P. 807; 14 T. L. R. 10.

Under a local Act which authorised the making of byelaws for prohibiting or regulating the erection on the foreshore, sands, and wastes of any booths, tents, sheds, stands, stalls, shows, exhibitions, swings, roundabouts or other erections, a byelaw which prohibited the erection of any booth, &c., on the foreshore, sands, or wastes except with the permission of the commissioners and subject to such conditions as they might prescribe was held to be valid. *Williams* v. *Weston-Super-Mare Urban District Council*, (1907) 98 L. T. 537; 72 J. P. 54; 6 L. G. R. 92. In that case the local Act gave power to prohibit and not merely to regulate, as in *Parker* v. *Mayor of Bournemouth* and *Moorman* v. *Tordoff*, *post*, p. 38. See also *Williams* v. *Weston-Super-Mare Urban District Council*, (1909) 74 J. P. 52.

The following are instances of byelaws which have been held to be invalid:

A byelaw which prohibited the erection of any booth for the purpose of any show or public entertainment in any public place within the borough without the licence of the mayor, and provided that such licence should not be given for any other time than during the annual fairs, if three inhabitant householders residing within 100 yards of the place intended to be used should memorialize the mayor to withhold it, was held to be unreasonable. *Elwood* v. *Bullock*, (1844) 6 Q. B. 383; 13 L. J. Q. B. 330; 8 Jur. 1044; 8 J. P. 473.

A byelaw prohibiting the keeping of swine within the borough from May 1st to October 31st in any year was held to be invalid because it was not confined to cases in which a nuisance was created. *Everett* v. *Grapes*, (1861) 3 L. T. (N. S.) 669; 25 J. P. 644.

A byelaw which provided that no person not being a member of Her Majesty's army or auxiliary forces acting under the orders of his commanding officer should sound or play upon any musical instrument in any of the streets in the borough on Sunday, was held to be unreasonable because it prohibited all music whatever and was not confined to such music as might cause annoyance. *Johnson* v. *Mayor of Croydon*, (1886) 16 Q. B. D. 708; 55 L. J. M. C. 117; 54 L. T. 295; 50 J. P. 487; 2 T. L. R. 371.

A byelaw which imposed a penalty on any person who should sound or play upon any musical or noisy instrument or sing, recite, or preach in any street without having previously obtained a licence in writing from the mayor, was held unreasonable because it extended to noises which were not nuisances. *Munro* v. *Watson*, (1887) 57 L. T. 366; 51 J. P. 660; 3 T. L. R. 445.

A byelaw which rendered the parent of a child under twelve liable to a penalty if he knowingly permitted the child to sell any article in any street at night between certain hours, was held invalid because it was not confined to cases in which a nuisance was created. *Macdonald* v. *Lochrane*, (1887) 51 J. P. 629; 3 T. L. R. 464. See now the Employment of Children Act, 1903 (3 Edw. 7, c. 45).

A byelaw in the following terms: "No person shall in any street or public place or on land adjacent thereto sing or recite any profane or obscene song or ballad or use any profane or obscene language"—was held to be unreasonable, first because the words "or on land adjacent thereto" went beyond what was necessary for the good government of the county, and secondly because the byelaw did not contain any words requiring that the acts should be done so as to cause annoyance to others. *Strickland* v. *Hayes*, [1896] 1 Q. B. 290; 65 L. J. M. C. 55; 74 L. T. 137; 44 W. R. 398; 60 J. P. 164; 18 Cox C. C. 244; 12 T. L. R. 199. But see now *Kruse* v. *Johnson*, *ante*, p. 33.

A byelaw which prohibited any person from wilfully annoying passengers in the public streets was held to be void for uncertainty where other byelaws enacted at the same time dealt with particular instances of annoyance, so that it was difficult to say what was included in this byelaw that was not included in the others. *Nash* v. *Finlay*, (1901) 85 L. T. 682; 66 J. P. 183; 20 Cox C. C. 101; 18 T. L. R. 92.

A byelaw prohibiting the posting or affixing of any bill, notice, or placard on any building, wall, fence, gate, door, pillar, tree, or post in or abutting on any street between 9 a.m. and 6 p.m. was held by the stipendiary magistrate for Cardiff to be invalid. *Reg.* v. *Richards*, (1897) 61 J. P. 40.

A byelaw which prohibited the frequenting and user of any street or other public place for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable result of races,

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steeplechases, or other competitions was held to be unreasonable because it was not confined to the sale of racing tips but included cases where the information related to competitions on which there might be no betting. *Scott* v. *Pilliner*, [1904] 2 K. B. 855; 73 L. J. K. B. 998; 91 L. T. 658; 68 J. P. 518; 20 Cox C. C. 731; 2 L. G. R. 1018; 20 T. L. R. 662.

Byelaws in restraint of trade have been held to be bad, except where the restraint was founded upon the custom of the locality. *Pierce* v. *Bartrum*, (1775) 1 Cowp. 269; *Shaw* v. *Pope*, (1831) 2 B. & Ad. 465; *Elwood* v. *Bullock*, *ante*, p. 37. By s. 247, *post*, every lawful trade may be carried on in any borough notwithstanding any custom or byelaw; but that section does not take away the power of making byelaws for the regulation of trade in the borough. This power, however, does not authorize the making of a byelaw which prohibits a class of traders from carrying on their trade at all in certain parts of the borough, where no such restriction is required in order to prevent a nuisance or to maintain order. *Toronto Municipal Corporation* v. *Virgo*, [1896] A. C. 88; 65 L. J. P. C. 4; 73 L. T. 449; 12 T. L. R. 46. See *Rossi* v. *Edinburgh Corporation*, [1905] A. C. 21; 91 L. T. 668; 7 F. 85.

The following byelaw was made by a municipal corporation under a local Act which empowered them to make byelaws for regulating the selling or hawking of any article on the beach or foreshore which was in their possession: "A person shall not on the said beach or foreshore sell or hawk or offer or expose for sale any article, commodity, or thing except in pursuance of an agreement with the corporation, and in such part or parts of the beach and foreshore as the corporation shall by notice affixed or set up thereon from time to time appoint for the purpose." This byelaw was held to be unreasonable because it gave the corporation arbitrary power with respect to the terms of the agreement referred to. *Parker* v. *Mayor of Bournemouth*, (1902) 86 L. T. 449; 66 J. P. 440; 18 T. L. R. 372.

Under a local Act which authorized the making of byelaws regulating the selling and hawking of any article, commodity, or thing on the seashore, a byelaw was held to be invalid which prohibited the sale of specified articles on the seashore except on a part of it which had been set apart for the purpose, and limited the right of sale to persons resident in the district, and made it subject to the payment of 2*s.* 6*d.* a week. *Moorman* v. *Tordoff*, (1908) 98 L. T. 416; 72 J. P. 142; 6 L. G. R. 360.

A byelaw containing several distinct provisions may be divisible, so that although part of it may be bad, the remainder may be valid. *R.* v. *Faversham*, (1799) 8 T. R. 352; 4 R. R. 691; *Reg.* v. *Lundie*, (1862) 31 L. J. M. C. 157; 5 L. T. (N. S.) 830; 8 Jur. (N. S.) 640; 10 W. R. 267; *Strickland* v. *Hayes*, *ante*, p. 37. In *Elwood* v. *Bullock*, *ante*, p. 37, the byelaw was held to be bad altogether.

Two classes of byelaws may be made under this section: byelaws for the good rule and government of the borough, and byelaws for the prevention and suppression of nuisances. The distinction is not unimportant because of the different manner in which the two classes require to be confirmed. See note (*h*), *infra*. A byelaw made under this section need not be one for the prevention or suppression of nuisances as well as for the good rule and government of the borough. *Macdonald* v. *Lochrane*, (1887) 51 J. P. 629; 3 T. L. R. 464.

Byelaws for the prevention of nuisances may be altered or repealed from time to time. Public Health Act, 1875, s. 182, *post*, p. 39, note (*h*).

The provisions of this section, in so far as they give power to make byelaws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are repealed by s. 85 of the Local Government Act, 1888, *post*, p. 449, by which such machines are declared to be carriages within the meaning of the Highway Acts.

It may be mentioned that a borough council, acting in the capacity of a local authority, is empowered by the Public Health Acts to make byelaws relating to a variety of subjects, *e.g.*, new streets and buildings, markets, hackney carriages, and offensive trades. Several series of model byelaws relating to these subjects have been issued by the Local Government Board. Byelaws may also be made by a borough council or a county council under various other Acts of Parliament, *e.g.* the Employment of Children Act, 1903 (3 Edw. 7, c. 45), the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), and the Advertisements Regulation Act, 1907 (7 Edw. 7, c. 27).

(*c*) In the case of byelaws for the prevention and suppression of nuisances, a

further penalty not exceeding forty shillings a day after written notice may be imposed for continuing offences, and the byelaws must be so framed as to allow of the recovery of any sum less than the full amount of the penalty, as provided by s. 183 of the Public Health Act, 1875, which is made applicable to such byelaws by s. 187 of that Act. See these sections set out in note (*h*), *infra*. This provision is not made applicable to byelaws for the good rule and government of the borough, but there does not appear to be any objection to the insertion of a clause in such byelaws permitting the recovery of a sum less than the full amount of the penalty. See *Piper* v. *Chappell*, (1845) 14 M. & W. 624; 9 Jur. 601.

(*d*) It is not required that two-thirds of the whole number of the council should take part in the voting on the byelaw. If two-thirds of the whole number are present, a byelaw may be made by the majority of those who are present and vote. Schedule 2, r. 10, *post*.

(*e*) As to the computation of the forty days, see s. 230; and as to the mode of fixing documents on the town hall, see s. 232. The forgery of the seal or signature affixed or subscribed to a byelaw is punishable under s. 235, *post*.

(*f*) Byelaws made for the prevention and suppression of nuisances are required by s. 187 of the Public Health Act, 1875, to be confirmed by the Local Government Board. See note (*h*), *infra*. The fact that a byelaw has been allowed by the confirming authority, or has not been disallowed within the prescribed period, does not of itself render the byelaw valid. *Reg.* v. *Mary Wood*, (1855) 5 E. & B. 49; *Elwood* v. *Bullock*, (1844) 6 Q. B. 383; 13 L. J. Q. B. 330; 8 Jur. 1044; 8 J. P. 473; *Kruse* v. *Johnson*, *ante*, p. 33.

(*g*) As to summary proceedings, see s. 219, *post*. The town council cannot summon persons to appear before them to answer complaints of offences against the byelaws. *In re Wiseman*, (1886) 3 T. L. R. 12.

(*h*) Section 187 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), provides as follows:

"**187.** Byelaws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to byelaws shall apply to the byelaws so made as if they were made under this Act."

The provisions of that Act relating to byelaws are contained in ss. 182—186, which are as follows:—

"**182.** All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

"**183.** Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

"Nothing in the provisions of any Act incorporated herewith shall authorize the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

"**184.** Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such byelaws be confirmed—

"Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

"Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open

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during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

"The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

"A byelaw required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority.

"**185.** All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

"**186.** A copy of any byelaws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making confirmation and existence of such byelaws without further or other proof."

The effect of these provisions is that byelaws for the prevention and suppression of the nuisances referred to in the text must be submitted to and confirmed by the Local Government Board in the manner prescribed by s. 184 of the Public Health Act, 1875, and do not require confirmation by any other authority. Byelaws for the good rule and government of the borough (not being byelaws for the suppression of nuisances) still require to be sent to the Secretary of State and will not come into force if they are disallowed by the King in Council.

Byelaws made by a town council acting as a local authority under the provisions of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), and the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), which are incorporated by ss. 160, 167, and 171 of the Public Health Act, 1875, now require confirmation by the Local Government Board. 47 & 48 Vict. c. 12, s. 3.

County Councils.—A county council have the same power of making byelaws in relation to their county or to any specified part or parts thereof as a borough council have in relation to their borough under this section; but byelaws made by a county council are not to be of any force or effect within any borough. Local Government Act, 1888, s. 16, *post*, p. 418. Section 187 of the Public Health Act, 1875, which requires byelaws relating to nuisances to be confirmed by the Local Government Board (see note (*h*), *supra*), is made applicable by s. 16 of the Act of 1888 to byelaws made by a county council under that section; but inasmuch as the whole of the provisions of s. 23 of the Municipal Corporations Act, 1882, are incorporated by s. 75 of the Local Government Act, 1888, it appears that byelaws for the good rule and government of the county, like similar byelaws in a borough, are to be sent to the Secretary of State for approval and do not require to be confirmed by the Local Government Board. See *Strickland* v. *Hayes*, (1896) 65 L. J. M. C. 55; 74 L. T. 137; 44 W. R. 398; 60 J. P. 164; 18 Cox C. C. 244; 12 T. L. R. 199. The decision on this point is not reported in the Law Reports, [1896] 1 Q. B. 290. Many of the cases cited in the notes to s. 23 have been decided with reference to byelaws made by county councils.

In London the power of making such byelaws may also be exercised by a metropolitan borough council, but byelaws made by them will be in force only within the borough and must not be inconsistent with byelaws made by the London County Council. See s. 5 (2) & Sched. 2, Part II., of the London Government Act, 1899 (62 & 63 Vict. c. 14).

Evidence of byelaws.

24. The production of a written copy of a byelaw made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the byelaw, and, if it is so stated in the copy, of the

byelaw having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the byelaw.

The expression "written" includes printed. See s. 7, *ante*, and s. 20 of the Interpretation Act, 1889, *post*, p. 479.

The production of an authenticated copy of the byelaw is *primâ facie* evidence that all the requirements of sub-ss. (2) (3) and (4) of s. 23 have been complied with, so that the byelaw is in operation as an effective byelaw. *Robinson* v. *Gregory*, [1905] 1 K. B. 534; 74 L. J. K. B. 367; 92 L. T. 171; 69 J. P. 161; 20 Cox C. C. 781; 3 L. G. R. 308.

Section 186 of the Public Health Act, 1875, which enables byelaws made under that Act to be proved by means of a copy signed and certified by the clerk of a local authority, does not apply to byelaws made by the council of a borough. See that section set out in note (*h*) to s. 23, *ante*. The mere production of a printed copy of the byelaws is not sufficient, even if it has a copy of the corporate seal printed on it. *Drew* v. *Harlow*, (1875) 39 J. P. 420; *Timothy* v. *Fenn*, (1910) 102 L. T. 283; 74 J. P. 123.

Expressions used in byelaws made after 1889 are to have the same respective meanings as in the Act conferring the power to make the byelaws, unless the contrary intention appears. Interpretation Act, 1889, s. 31, *post*, p. 479.

County Councils.—Byelaws made by a county council may be proved by a copy certified by the clerk of the council. See s. 186 of the Public Health Act, 1875, which is incorporated by s. 16 of the Local Government Act, 1888, and is set out in note (*h*) to s. 23, *ante*.

Accounts and Audit.

The borough auditors.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.

(2.) An elective auditor must be qualified to be a councillor, but may not be a member of the council or the town clerk or the treasurer.

(3.) The mayor's auditor must be a member of the council.

(4.) The term of office of each auditor shall be one year.

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors.

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy.

As to the qualification of a councillor, see s. 11, *ante*. The requirement as to qualification applies not only at the time of election but throughout the auditor's term of office. A person who acts in the office after ceasing to be qualified or after becoming disqualified is liable to a penalty under s. 41, *post*. The election of auditors is regulated by s. 62, *post*, which fixes the first of March as the ordinary day of election. A retiring elective auditor can be re-elected if he is not disqualified (s. 37). As to the filling of a casual vacancy in the office of elective auditor, see ss. 40 & 66.

An elective auditor is not entitled to any remuneration for auditing the treasurer's accounts under this Act; but he is entitled under s. 246 of the Public Health Act, 1875, to such reasonable remuneration, not being less than two guineas for each day of the audit, as the council may appoint for auditing their accounts as an urban authority acting under the Public Health Acts. *Thomas* v. *Devonport Corporation*, [1900] 1 Q. B. 16; 69 L. J. Q. B. 51; 81 L. T. 427; 48 W. R. 89; 63 J. P. 740; 16 T. L. R. 9.

County Councils.—This section has no application to county councils. Local Government Act, 1888, s. 75 (16) (*b*).

Half-yearly accounts of treasurer.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government

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Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

As to the right of a member of the council to inspect the treasurer's accounts, see s. 233.

County Councils.—The accounts of the receipts and expenditure of county councils are to be made up to the end of each local financial year, *i.e.*, the 31st March. Local Government Act, 1888, ss. 71 (1), 73. The provisions of this Act with respect to the accounts of the treasurer of the borough and to the inspection and abstract thereof are to apply to the accounts of a county council and of the treasurer and officers of such council. *Ibid.*, s. 71 (2), *post*.

Audit and publication of treasurer's accounts.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year.

As to the right of any member of the council to inspect the treasurer's accounts and of any ratepayer of the borough to inspect the abstract of the treasurer's accounts, see s. 233.

The accounts of the receipts and expenditure of a borough council acting as an urban authority under the Public Health Acts are to be audited by the borough auditors and published in like manner and at the same time as the municipal accounts. Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 246. But the accounts of a joint committee appointed by the council of a borough and another council not being a borough council under s. 57 of the Local Government Act, 1894, are to be audited by a district auditor under s. 58 (2) of that Act, *post*, p. 565. The accounts of a borough council under the Education Act, 1902, are to be audited by a district auditor. See s. 18 (3) of that Act, *post*, p. 608.

In the case of certain recently created boroughs provision has been made by local Acts for the audit of the municipal accounts by district auditors in the same manner as the accounts of an urban authority under the Public Health Act, 1875. See for instance the case of Bournemouth, 55 & 56 Vict. c. clxiii., s. 105.

The system of auditing which is provided by this section is quite ineffective. The borough auditors have not the power of district auditors appointed by the Local Government Board to disallow charges which they consider to be illegal and to surcharge members of the council who have authorized illegal expenditure; and though it is their duty to see by examination of the vouchers whether any illegal or improper payments have been made, and to report any such payments that they may discover to the council and to the burgesses, this is a duty of imperfect obligation, for there is nothing to compel them to do so. *Thomas* v. *Devonport Corporation*, *ante*, p. 41; *Attorney-General* v. *De Winton*, [1906] 2 Ch. 106; 75 L. J. Ch. 612; 54 W. R. 499; 70 J. P. 368; 4 L. G. R. 549; 22 T. L. R. 446.

Where a borough council had unlawfully borrowed money by means of an overdraft at their bankers, it was held that the treasurer was not entitled to charge in his accounts payments of interest on such overdraft, and that the fact that the accounts had been audited was no bar to an action by a burgess against the treasurer impeaching his accounts, for an audit under this section is not made binding and conclusive on the borough and the burgesses. *Attorney-General* v. *De Winton*, *supra*.

County Councils.—The accounts of a county council and of the county treasurer and officers of the council are to be audited yearly by the district auditors appointed by the Local Government Board in the same manner as the accounts of an urban authority and their officers under the Public Health Act, 1875. Local Government Act, 1888, s. 71 (3).

The provision of this section with respect to the abstract of the treasurer's accounts applies to the accounts of the treasurer and officers of a county council. Local Government Act, 1888, s. 71 (2).

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

Returns to Local Government Board.

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court.

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

As to the annual returns to be made in respect of a sinking fund created for the purpose of discharging a loan, see s. 16 of the Local Loans Act, 1875, *post*, p. 293.

County Councils.—The provisions of this section are made applicable to county councils by s. 71 (2) of the Local Government Act, 1888, which also requires a return to be made of a printed copy of the abstract of the accounts of the treasurer and officers of the county council.

In the case of a county council the local financial year ends on the 31st of March, and the accounts of their receipts and expenditure are to be made up for that year. Local Government Act, 1888, s. 73.

County Councils are required to cause an estimate to be submitted to them at the beginning of every local financial year of their receipts and expenses during that year, and to estimate the amount that will require to be raised in the first six months and in the second six months of that year by means of contributions. *Ibid.*, s. 74.

The accounts of a joint committee appointed by two or more county councils and of its officers are to be deemed to be accounts of the councils appointing the committee and of their officers. *Ibid.*, s. 81 (6).

Revising Assessors.

Revising assessors in non-parliamentary boroughs.

29.—(1.) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses.

(2.) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

(3.) The term of office of each revising assessor shall be one year.

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

(5.) The appointment shall be signified to the council, in writing signed by the assessor, and be recorded in their minutes.

Revising assessors were formerly appointed in non-parliamentary boroughs to assist the mayor in revising the burgess lists in accordance with the provisions of s. 44 (2) and Schedule 3, Part I. of this Act; but the provisions of the Registration Acts have been extended to non-parliamentary boroughs by s. 4 of the County

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Electors Act, 1888, *post*, p. 410, which provides that revising assessors are no longer to be elected. The burgess lists are now revised by the revising barrister under ss. 18 and 28 of the Parliamentary and Municipal Registration Act, 1878, *post*, pp. 334, 337.

Division of Borough into Wards, or alteration of Wards.

Proceedings for division of borough into wards or alteration of wards.

30.—(1.) If two thirds of the council of a borough agree to petition, and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards.

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the London Gazette one month at least before the petition is so considered.

(3.) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the London Gazette, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If Her Majesty in Council does not approve the scheme as originally prepared by the commissioner, it shall nevertheless be published in the London Gazette, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitely approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.

The provisions of this section have been modified by s. 2 of the Municipal Corporations Act, 1893 (56 & 57 Vict. c. 9), *post*, p. 209, by virtue of which a petition may now be presented upon a resolution passed by a bare majority of the whole council, and may pray for the alteration of the boundaries of the wards of a borough without any alteration of their number. Where a petition prays for the alteration of boundaries only, the provisions of s. 30 are to apply so far as applicable. The Act of 1893 further provides by s. 3 that when the powers conferred by the text as amended by that Act have been exercised in pursuance of a petition by the council of any borough, a further petition from the council of the same borough is not to be presented before the expiration of seven years from the date of the Order in Council. This, however, does not prevent the presentation of a further petition within that period where no order has been made upon the first petition.

As to the alteration of the boundary of a borough, see s. 54 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, p. 437. An order made by the Local Government Board under that section may, as consequential upon the alteration of the boundary of a borough, increase or decrease the number of the wards in the borough, or alter the boundaries of such wards, or alter the apportionment of the number of councillors among the wards.

County Councils.—The provisions of this section with reference to the alteration of wards are not applied to county electoral divisions. Local Government Act, 1888, s. 75 (16) (*b*). A county council is elected in the same manner as the council of a borough divided into wards, but the divisions of a county for the purpose of the election of county councillors are called electoral divisions, and not wards, and one councillor only is to be elected for each electoral division. *Ibid.*, s. 2 (1), (2) (*e*). The number of the county councillors and their apportionment between the boroughs having sufficient population to return one or more councillors and the rest of the county was originally determined by the Local Government Board, and the electoral divisions were constituted in the manner directed by ss. 2 (3) and 51 of that Act. An alteration of the boundary of any electoral division or of the number of county councillors and electoral divisions in a county may be made by an order of the Local Government Board under s. 54 of that Act, *post*.

The number of county councillors and the electoral divisions for the county of London are fixed by s. 40 (4) of the Local Government Act, 1888.

Supplemental and Exceptional Provisions.

31. In and for the purposes of this Act—

Occupation of part of house.

(a) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

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(b) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

See note (*f*) to s. 9, *ante*. Clause (a) refers in terms only to part of a building which is separately occupied for business purposes, but it has been held that the separate occupation of part of a dwelling-house entitles the occupier to the municipal franchise under this section. *Greenway* v. *Bachelor* (*Aldridge's Case*), (1883) 12 Q. B. D. 381; 53 L. J. Q. B. 180; 50 L. T. 272; 32 W. R. 319; 47 J. P. 792; Colt. 317.

It is not necessary that there should be any structural severance of the part which is separately occupied. *Allchurch* v. *Hendon Union*, [1891] 2 Q. B. 436; 61 L. J. M. C. 27; 65 L. T. 450; 40 W. R. 86; 56 J. P. 117; 7 T. L. R. 634. As to what constitutes separate occupation of part of a house as a dwelling, see *Clutterbuck* v. *Taylor*, [1896] 1 Q. B. 395; 65 L. J. Q. B. 314; 74 L. T. 177; 44 W. R. 531; 60 J. P. 278; 1 Smith 59; 12 T. L. R. 235; and as to the distinction between an occupying tenant and a lodger, see note (*d*) to s. 9, *ante*.

County Councils.—This section is made applicable to so much of every county as is not comprised within the limits of a borough for the purpose of the qualification of county electors by s. 2 (2) of the County Electors Act, 1888 (51 & 52 Vict. c. 10), *post*.

Claim by occupier to be rated.

32.—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

By s. 19 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), *post*, p. 254, the overseers are required in every case in making out the poor rate, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, to enter in the occupiers column of the rate book the name of the occupier of every rateable hereditament, and such occupier is to be deemed to be duly rated for any qualification or franchise depending upon rating; and any occupier whose name has been omitted is entitled, notwithstanding such omission and that no claim to be rated has been made by him, to every qualification and franchise depending upon rating in the same manner as if his name had not been so omitted.

The provisions of that section are supplemented by the text, which enables the tenant to make a claim to be rated where the landlord is not rated or has not paid his rates. *Marsh* v. *Estcourt*, (1889) 24 Q. B. D. 147; 59 L. J. Q. B. 100; 38 W. R. 495; 54 J. P. 294; Fox & Smith 157.

Under a similar provision in 2 & 3 Will. 4, c. 45, s. 30, it was held that a claim to be rated applied only to the rate for the time being in force, and must be repeated when a subsequent rate was made. *Wansey* v. *Perkins* (*Lockey's Case*), (1845) 7 M. & G. 145; 14 L. J. C. P. 59; 1 Lutw. 249. In the case of parliamentary electors this has been altered by 14 & 15 Vict. c. 14, s. 1, but that Act does not apply to the burgess franchise.

Rules as to qualification of burgess on succession, &c.

33.—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating

in the name of the successor ; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only—

(a) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority ; or

(b) That his child has been admitted to and taught in any public or endowed school.

See s. 9, *ante*, and the notes thereto. As to succession by promotion to an office, see *Williams* v. *Blakeway*, (1902) 88 L. T. 231 ; 51 W. R. 127 ; 67 J. P. 11 : 47 Sol. J. 51 ; 1 L. G. R. 69. As to the removal of a person suffering from a dangerous infectious disorder to a hospital by order of a justice, see s. 124 of the Public Health Act, 1875 (38 & 39 Vict. c. 55).

By s. 17 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), a school board may remit school fees where the parent of a child is unable from poverty to pay them, but such remission is not to be deemed to be parochial relief. Section 10 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), enables the guardians to pay school fees where the parent is unable to pay through poverty, and provides that the parent is not to be deprived of any franchise or be subject to any disqualification by reason of such payment. The operation of these provisions has been greatly diminished by the Elementary Education Act, 1891 (54 & 55 Vict. c. 56), by which the payment of school fees has been abolished in most cases. As to the education of blind and deaf or defective or epileptic children, see 56 & 57 Vict. c. 42, s. 10; 62 & 63 Vict. c. 32, s. 8.

Obligation to accept office or pay fine.

34.—(1.) Every qualified person elected to a corporate office (*a*), unless exempt under this section or otherwise by law (*b*), either shall accept the office by making and subscribing the declaration required by this Act (*c*) within five days after notice of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by byelaw determine (*d*).

(2.) If there is no byelaw determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

(a) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body ; and

(b) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4.) A fine payable under this section shall be recoverable summarily (*e*).

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(*a*) The term "corporate office" means the office of mayor, alderman, councillor, or elective auditor (s. 7).

(*b*) In addition to the persons mentioned in sub-s. (3), the following are exempted by statute from liability to serve a corporate office: registrars of births and deaths and registrars of marriages (7 Will. 4 & 1 Vict. c. 22, s. 18); officers of the Post Office (7 Will. 4 & 1 Vict. c. 33, s. 12); registered medical practitioners (21 & 22 Vict. c. 90, s. 35); commissioners and officers of the customs (39 & 40 Vict. c. 36, s. 9); factory inspectors (1 Edw. 7, c. 22, s. 118); registered dentists (41 & 42 Vict. c. 33, s. 30); men belonging to the army reserve (45 & 46 Vict. c. 48, s. 7); commissioners and officers of inland revenue (53 & 54 Vict. c. 21, s. 8). Military, naval, and marine officers on full pay or half pay, and officers and other persons employed and residing in any naval or military establishment, are exempted by s. 253, *post*. As to the partial exemption of resident members of the Universities of Oxford and Cambridge from accepting any office in or under the municipal corporation of Oxford or of Cambridge, see s. 257 (4), *post*. It will be observed that there is no exemption of a person who has been elected without his knowledge or consent. See *Reg.* v. *May*, (1851) 20 L. J. Q. B. 268.

In proceedings to recover a penalty under this section, *primâ facie* evidence at any rate must be given that the person charged was qualified to be elected. *Reg.* v. *Richmond*, (1862) 11 W. R. 65; 26 J. P. 771.

(*c*) The declaration is required by s. 35. For the form of declaration, see Schedule 8, Form A, *post*.

A person who has been elected is not liable to a fine under this section unless he has had regular notice of his election, either by being present when the result was announced, or by receiving a notification of it from some official authority. It is not sufficient to show that he had casual information of his election. *Reg.* v. *Preece*, (1843) 5 Q. B. 94; 12 L. J. Q. B. 335; D. & M. 156; 7 Jur. 896. Where a person who had been elected was prevented from making the declaration by the fact that his office was usurped by another person, it was held that he was not liable to pay the fine. *R.* v. *Coaks*, (1854) 3 E. & B. 249; 2 C. L. R. 947; 23 L. J. Q. B. 133; 18 Jur. 378.

(*d*) There is nothing to prevent the council from fixing the amount of the fine at a nominal sum. The amount must be certain, but it does not appear that a provision enabling a penalty less than the full amount to be inflicted would render the byelaw invalid. See *Piper* v. *Chappell*, *ante*, p. 39.

Non-acceptance of office creates a casual vacancy. Section 40 (3). As to the case of a person elected councillor in more than one ward, see s. 68.

(*e*) That is, before two or more justices. Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 20, 51.

County Councils.—In the case of a person elected to a corporate office in a county the declaration may be made at any time within three months after notice of the election. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 5, *post*.

A person who has been elected to a corporate office in a county without his consent to his nomination being previously obtained is exempted from liability to pay a fine on non-acceptance of office by s. 75 (16) (c) of the Local Government Act, 1888.

Declaration on acceptance of office.

35. A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

For the meaning of the term corporate office, see s. 7. A person who acts in a corporate office without having made the required declaration is liable to a penalty under s. 41. Authority to receive the declaration is given by s. 239.

Where a councillor who administered the declaration to another knew that the latter was disqualified, it was held that he was precluded by his acquiescence from appearing as relator in proceedings by way of *quo warranto* to avoid the election. *Reg.* v. *Greene*, (1842) 2 Q. B. 460; 11 L. J. Q. B. 107.

County Councils.—A person who has been elected to a corporate office in a county may make the declaration either in the manner prescribed by this section (the clerk of the county council being substituted for the town clerk), or before any justice

of the peace or commissioner to administer oaths in the Supreme Court of Judicature. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 5, *post*.

Fine on resignation, &c.

36.—(1.) A person elected to a corporate office may at any time by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof (*a*).

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant (*b*).

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office (*c*).

(*a*) For the meaning of the term corporate office, see s. 7.

As to the fine for non-acceptance of office, see s. 34.

A person who has become disqualified under s. 39, *post*, ceases to hold his office and cannot resign it. *Hardwick* v. *Brown*, (1873) L. R. 8 C. P. 406; 28 L. T. 502; 21 W. R. 639; 37 J. P. 407. Where a disqualified person has been elected, the fact that he has resigned his seat does not prevent an unsuccessful candidate from claiming the seat by an election petition. *Reg.* v. *Blizard*, (1866) L. R. 2 Q. B. 55; 36 L. J. Q. B. 18; 7 B. & S. 922; 15 L. T. (N. S.) 242; 15 W. R. 105; 31 J. P. 200.

If an alderman is elected to the office of councillor and accepts that office, he thereby vacates the office of alderman which is incompatible with it. *Quære*, whether in such a case he is liable to a fine. *Reg.* v. *Mayor of Bangor*, (1886) 18 Q. B. D. 349; 56 L. J. Q. B. 326; 56 L. T. 434; 35 W. R. 158; 51 J. P. 51; 3 T. L. R. 176. The House of Lords gave no decision on this point in that case: *Pritchard* v. *Mayor of Bangor*, (1888) 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564.

The resignation is complete when the writing has been delivered to the town clerk and the fine has been paid; and it cannot afterwards be withdrawn, even with the consent of the council. *Reg.* v. *Mayor of Wigan*, (1885) 14 Q. B. D. 908; 54 L. J. Q. B. 338; 52 L. T. 435; 33 W. R. 547; 49 J. P. 372; 1 T. L. R. 370. A person who has resigned cannot continue to act in the office, but the office does not become vacant until the council have declared it to be so in the manner required by sub-s. (2). *Pease* v. *Lowden*, [1899] 1 Q. B. 386; 68 L. J. Q. B. 239; 79 L. T. 672; 63 J. P. 56; 15 T. L. R. 147.

(*b*) As to the mode in which the notice is to be fixed on the town hall, see s. 232, *post*.

(*c*) No oath is required by this Act to be taken by any person elected to a corporate office. See s. 239, *post*, and 31 & 32 Vict. c. 72, s. 12, *post*, p. 249, by which a declaration has been substituted for the oath which was formerly required to be taken on accepting office. As regards the declaration which is required by s. 35 of this Act, the form prescribed by Schedule 8, *post*, does not contain any reference to the Protestant Church, such as was contained in the form prescribed by 9 Geo. 4, c. 17, s. 2, so that it is difficult to see how any objection to the declaration can be made on conscientious grounds.

County Councils.—In the case of a county council the notice must be countersigned by the clerk of the council. As to the publication of the notice, see the note to s. 232, *post*.

Re-eligibility of office holders.

37. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible.

See *Futcher* v. *Saunders*, cited in note (*d*) to s. 39.

Mayor and aldermen to continue members of council.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years.

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The term of office of a councillor is three years, and one third of the whole number of councillors retire every year (s. 13). The term of office of the mayor is one year, but he continues in office until his successor has accepted office (s. 15). Where the mayor is one of the councillors who go out of office on the 1st November, his office of councillor becomes vacant on that day, but he continues to be a supernumerary member of the council until his successor has accepted office. *Reg.* v. *Owens*, (1859) 2 E. & E. 86; 28 L. J. Q. B. 316; 33 L. T. (O. S.) 257.

County Councils.—This section applies to the chairman of a county council and the county aldermen.

Avoidance of office by bankruptcy or absence. 32 & 33 Vict. c. 71.

39.—(1.) If the mayor, or an alderman or councillor—

(a) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise (*a*); or

(b) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months (*b*):

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant (*c*).

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge (*d*).

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return (*e*).

(*a*) The provisions of the text with regard to disqualification by bankruptcy have been modified by s. 32 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), which provides that where a debtor is adjudged bankrupt he shall be disqualified for being elected to or holding or exercising the office of mayor, alderman, or councillor; but the disqualification is to be removed and cease if and when the adjudication of bankruptcy against him is annulled, or he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. Section 34 of the same Act provides that if a person is adjudged bankrupt whilst holding the office of mayor, alderman, or councillor, his office shall thereupon become vacant. Section 9 of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), provides that no disqualification arising by virtue of s. 32 of the Act of 1883 is to exceed a period of five years from the date of any discharge granted under and by virtue of either of those Acts. Under the provision in the text a bankrupt is only disqualified if at the time of his adjudication he held one of the offices mentioned; but the disqualification is extended by the Act of 1883 to candidates for election to any of these offices. A bankrupt is therefore now not only disqualified for being elected to any of the offices mentioned, but is disqualified for holding or exercising the office, whether his bankruptcy took place before or after his election. *R.* v. *Beer*, [1903] 2 K. B. 693; 72 L. J. K. B. 608; 89 L. T. 412; 67 J. P. 326; 10 Manson 263; 1 L. G. R. 634; 19 T. L. R. 531. The expression "disqualified for holding the office" of councillor, etc., in the Bankruptcy Act, 1883, has the

same meaning as "disqualified for being a councillor" in s. 12, *ante*. *Ibid.*, per Lord Alverstone, C.J.

An order made by a county court judge under s. 122 of the Bankruptcy Act, 1883, for the administration of the estate of a debtor whose debts do not exceed £50, is not an adjudication of bankruptcy within the meaning of s. 32 of that Act. *Lowe* v. *Lowrie*, (1902) 18 T. L. R. 553. But it has been held that a debtor upon whose request an administration order has been made, under which his creditors are bound to take less than 20*s*. in the pound, is a person who has made a composition or arrangement with his creditors within the meaning of s. 46 of the Local Government Act, 1894 (56 & 57 Vict. c. 73). *Bradfield* v. *Cheltenham Guardians*, [1906] 2 Ch. 371; 75 L. J. Ch. 618; 95 L. T. 78; 54 W. R. 611; 70 J. P. 371; 13 Manson 207; 4 L. G. R. 961; 22 T. L. R. 639.

Section 32 of the Bankruptcy Act, 1883, has been held not to apply to the case of a person who became bankrupt before the date when that Act was passed. *Bourke* v. *Nutt*, [1894] 1 Q. B. 725; 63 L. J. Q. B. 497; 70 L. T. 639; 42 W. R. 388; 10 T. L. R. 349.

The provision in the text applies only to matters arising after a person has been elected to one of the offices specified; it does not apply where the bankruptcy took place or the arrangement or composition was made before his election. *R.* v. *Chitty*, (1836) 5 A. & E. 609. In the case of bankruptcy the law has been altered by the provisions of the Bankruptcy Act, 1883; but s. 32 of that Act applies only where a debtor is adjudged bankrupt. It appears therefore that a person is not disqualified for election to any of these offices by the fact that he has compounded by deed with his creditors or has made an arrangement or composition with his creditors under the Bankruptcy Acts. See *Lowe* v. *Lowrie*, *supra*, per Phillimore, J.

The reference in the text to the Bankruptcy Act, 1869, is to be construed as referring to the corresponding provisions of the Act of 1883. 46 & 47 Vict. c. 52, s. 149.

A composition with creditors which is not made under the Bankruptcy Acts and is not by deed does not disqualify. *Aslatt* v. *Southampton Corporation*, (1880) 16 Ch. D. 143; 50 L. J. Ch. 31; 43 L. T. 464; 45 J. P. 111.

An assignment by a debtor of the whole of his property for the benefit of his creditors is not a composition, if there is no bargain on their part to accept less than the full amount of their debts. *Reg.* v. *Cooban*, (1886) 18 Q. B. D. 269; 56 L. J. M. C. 33; 51 J. P. 500; 3 T. L. R. 260.

Where an arrangement with creditors is made by a partnership, the members of the firm make an arrangement with their creditors. *Ward* v. *Radford*, (1895) 11 T. L. R. 587. See also *Ex parte Atherton*, (1886) 2 T. L. R. 631.

This section does not in terms apply to an elective auditor, but any person who is disqualified for holding the office of councillor is disqualified also for holding the office of elective auditor. See the note to s. 25, *ante*.

(*b*) As to the meaning of the words "continuously absent," see *Re Walker*, [1901] 1 Ch. 259; 70 L. J. Ch. 229; 49 W. R. 167, decided under s. 10 of the Trustee Act, 1893 (56 & 57 Vict. c. 53).

Officers and soldiers of the auxiliary forces or of the reserve forces on active service or on service beyond the seas are exempted from disqualification by reason of absence by s. 2 of the Members of Local Authorities Relief Act, 1900 (63 & 64 Vict. c. 46).

Under rule 14 of the first part of the second schedule to the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), which provides that if a member of a school board absents himself during six successive months from all meetings of the board, except from temporary illness or other cause to be approved by the board, he shall cease to be a member, it has been held that the board are not entitled to elect a new member in the place of a member who has been absent, without first giving him an opportunity of explaining his absence. *Richardson* v. *Methley School Board*, [1893] 3 Ch. 510; 62 L. J. Ch. 943; 69 L. T. 308; 42 W. R. 27; 9 T. L. R. 603.

(*c*) In the case of disqualification by bankruptcy, the office becomes vacant by virtue of s. 34 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). In the other cases mentioned in the text the office does not become vacant until the required notice has been given. *Reg.* v. *Mayor of Leeds*, (1838) 7 A. & E. 963; 2 Jur. 345; *Reg.* v. *Mayor of Welchpool*, (1876) 35 L. T. 594. See also *Hardwick* v. *Brown* and *Pease* v. *Lowden*, cited in note (*a*) to s. 36, *ante*. As to the publication of the notice, see s. 232, *post*. It is to be observed that the requirement that the office is to be declared

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vacant applies only to the cases of disqualification mentioned in the text, and does not extend to cases of disqualification arising under s. 12, *ante*, or under any other Act.

(*d*) Unless the bankruptcy is annulled or the bankrupt obtains a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, the disqualification now continues for five years from the date of his discharge. See the provisions of the Bankruptcy Acts quoted in note (*a*), *supra*. A person who has become disqualified by compounding with his creditors is not re-eligible until his debts have been paid in full. *Fu cher* v. *Saunders*, (1885) 49 J. P. 424.

(*e*) As to the fine for non-acceptance of office, see s. 34.

At common law the power of amotion or removal of any of its members for reasonable cause, such as corrupt or dishonest conduct, was incident to every corporation. *R.* v. *Richardson*, (1758) 1 Burr. 517; Kyd on Corporations, vol. 2, p. 50. The question whether the common law power has been superseded by the provisions of this Act with respect to disqualifications for a corporate office has never been decided. In *Booth* v. *Arnold*, [1895] 1 Q. B. 571; 64 L. J. Q. B. 443; 72 L. T. 310; 43 W. R. 360; 59 J. P. 215; 11 T. L. R. 246, Lopes, L.J., held that the power still exists and can be exercised by a corporation that is subject to the Municipal Corporations Acts; the other members of the Court of Appeal, however, refrained from expressing any opinion on this point. See also *Reg.* v. *Ryde Corporation*, (1873) 28 L. T. 629; 37 J. P. 725.

As to the nature of the offences for which a corporate officer could be removed, see Kyd on Corporations, vol. 2, p. 62. Habitual drunkenness has been held to justify the removal of an alderman, *R.* v. *Taylor*, (1694) 3 Salk. 231; but in *Alexander* v. *Jenkins*, [1892] 1 Q. B. 797; 61 L. J. Q. B. 634; 66 L. T. 391; 40 W. R. 546; 56 J. P. 452; 8 T. L. R. 421, it was assumed that a town councillor could not be removed from office on this ground.

County Councils.—The disqualifications arising by virtue of s. 32 of the Bankruptcy Act, 1883, are declared to include disqualification for being elected to or holding or executing the office of a member of a county council. Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 9.

The period of absence which disqualifies a county alderman or county councillor is twelve months. Local Government Act, 1888, s. 75 (14). But the chairman of a county council is not disqualified as such by reason of absence, nor is the deputy-chairman of the London County Council. *Ibid.*, s. 75 (16).

Filling of casual vacancies.

40.—(1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

The term "corporate office" is defined by s. 7, *ante*.

A casual vacancy is one which arises from any other cause than the expiration of the term for which the office is held; for instance, from death, disqualification, or resignation of office. As regards disqualification, however, except in the cases mentioned in s. 39, *ante*, the fact of disqualification must be established by a judicial decision before proceedings can be taken for the purpose of filling the vacancy. See *Reg.* v. *Phippen*, (1838) 7 A. & E. 966.

Where a person elected to a corporate office has been unseated on an election petition, and no other person has been declared elected in his room, a new election is to be held to supply the vacancy in the same manner as on a casual vacancy. Section 103, *post*. As to elections to fill ordinary vacancies, see ss. 50—62, *post*. The time within which an election to fill a casual vacancy is to be held is fixed by s. 66, *post*. Where no valid nomination was made to fill a casual vacancy, a *mandamus* was granted directing an election to be held. *Reg.* v. *Mayor of Stratford-on-Avon*, (1886) 2 T. L. R. 431; *Re West Sussex County Council, Ex parte Henderson*, (1895) 65 L. J. Q. B. 184; 73 L. T. 566; 59 J. P. 808; 12 T. L. R. 99.

If an election to fill a casual vacancy is held at the same time as the ordinary annual election, care must be taken to distinguish the casual vacancy from the ordinary vacancies, otherwise the election will be void. *Reg.* v. *Rowley*, (1844) 6 Q. B. 668; 14 L. J. Q. B. 62; 8 Jur. 1170; *Reg.* v. *Rippon*, (1876) 1 Q. B. D. 217; 45 L. J. Q. B. 188; 34 L. T. 444; 24 W. R. 363; 40 J. P. 536.

County Councils.—The provision as to the order of rotation in case of more than one casual vacancy being filled at the same election does not apply to county councillors, for they all retire together. Local Government Act, 1888, s. 2 (2) (*d*). If a casual vacancy in the office of county councillor occurs within six months before the ordinary day of retirement of county councillors, it is not to be filled up. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1, *post*.

Penalty on unqualified person acting in office.

41.—(1.) If any person acts in a corporate office (*a*) without having made the declaration by this Act required (*b*), or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified (*c*), he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action (*d*).

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein (*e*).

(*a*) See the definition of "corporate office" in s. 7, *ante*. A person may act in a corporate office by taking part in the discussion at a meeting of the council, even if he does not vote. See *Charlesworth* v. *Rudgard*, (1834) 1 C. M. & R. 498; 4 L. J. (N. S.) Ex. 89; 4 Tyr. 824.

Entries in the minute-book kept pursuant to s. 22, *ante*, may be used as evidence that a person so acted. See *Hunnings* v. *Williamson*, *ante*, p. 23. In an unreported case of *Samuels* v. *Clarke*, it was held by Phillimore, J., that a county councillor who was disqualified by bankruptcy was liable to three separate penalties under this section for taking part in a meeting of the council, for handing in a voting paper, and for acting on a committee of the council at a meeting held on the same day. Q. B. D., October 26th, 1898.

(*b*) See s. 35, *ante*.

(*c*) As to qualification and disqualifications, see ss. 11, 12, and 39, *ante*.

In the case of a person who has become disqualified, the liability to a penalty ceases when the disqualification has been removed. "After becoming disqualified" means "after becoming disqualified and while he is disqualified." See *Lewis* v. *Carr*, *ante*, p. 24.

(*d*) An action to recover a fine under this section may not be brought except by a burgess of the borough. The action must be commenced within three months after the cause of action arose, and notice of action must be given within fourteen days. See s. 224, *post*, which regulates the procedure in such an action.

An unqualified person is liable to a fine under this section for acting in a corporate office, notwithstanding the fact that the validity of his election cannot be called in question because no proceedings have been taken for that purpose within twelve months after the election, the time limited by s. 73, *post*. *De Souza* v. *Cobden*, [1891] 1 Q. B. 687; 60 L. J. Q. B. 533; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565; 7 T. L. R. 441.

The absence of any corrupt motive is no defence to an action for penalties under this section. See *Barnacle* v. *Clark*, *ante*, p. 23.

A person who is not qualified or who is disqualified is not liable to a fine under this

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section so long as he refrains from acting in his office; but his election may be questioned by an election petition or his right to hold the office may be questioned by *quo warranto*. See the notes to ss. 87 and 225, *post*.

(*e*) The holder of a corporate office must not only be enrolled but must be entitled to be enrolled as a burgess. Section 11, *ante*. The provision of the text exempts a person who is enrolled in the burgess roll but is not entitled to be enrolled from liability to a fine, but does not prevent his being unseated on an election petition or *quo warranto*. See *Flintham* v. *Roxburgh*, *ante*, p. 20.

Validity of acts done notwithstanding disqualification, &c.

42.—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified (*a*).

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised (*b*), if he was then in actual possession and exercise of the office of mayor or revising authority.

(*a*) Section 102, *post*, contains a similar saving for acts done by a candidate who has been unseated on an election petition.

The provision in the text, however, does not prevent an inquiry into the validity of a vote given by a person acting as a councillor at the election of a mayor, where such election is questioned by an election petition under s. 87, *post*. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499; 38 Sol. J. 309; 10 T. L. R. 344; *Bland* v. *Buchanan*, [1901] 2 K. B. 75; 70 L. J. K. B. 466; 84 L. T. 390; 49 W. R. 601; 65 J. P. 404; 17 T. L. R. 348.

(*b*) The revising authority is now the revising barrister. See the note to s. 29, *ante*.

Duties of town clerk, deputy, and treasurer, during vacancy or incapacity.

43. If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

PART III.

PREPARATIONS FOR AND PROCEDURE AT ELECTIONS.

[The whole of this Part (ss. 44—76), except the provisions relating to borough auditors (s. 62), is made applicable to county councils by s. 75 of the Local Government Act, 1888.]

Parish Burgess Lists; Burgess Rolls; Ward Rolls.

Preparation and revision of parish burgess lists.

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the

provisions of the Parliamentary and Municipal Registration Act, 1878 (*a*).

(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule (*b*).

41 & 42 Vict. c. 26.

(3.) In either case the lists shall be styled the parish burgess lists.

(*a*) The Parliamentary and Municipal Registration Act, 1878, is set out *post*, pp. 328 *et seq.*

(*b*) The provisions of Part I. of the Third Schedule have become obsolete. The lists of burgesses are now made out in every case in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878, and are revised by the revising barrister. See s. 4 of the County Electors Act, 1888 (51 & 52 Vict. c. 10), *post*, p. 410.

County Councils.—The Registration of Electors Acts are also made applicable to the registration of county electors by s. 4 of the County Electors Act, 1888, subject to certain modifications which are set out in that section.

The burgess roll and ward rolls.

45.—(1.) When the parish burgess lists have been revised and signed, the revising authority shall deliver them to the town clerk, and a printed copy thereof, examined by him and signed by him, shall be the burgess roll of the borough (*a*).

(2.) The burgess roll shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelve months beginning on that day (*b*).

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts (*c*).

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5.) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.

(6.) A burgess shall not be enrolled in more than one ward roll.

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878 (*d*), it shall have the same effect as the original, and may be delivered instead thereof.

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9.) No stamp duty shall be payable in respect of the enrolment of a burgess.

(*a*) The revising authority is now the revising barrister. See note (*b*) to s. 44.

Where the names of several burgesses had been inserted in the wrong ward rolls, and the mistake was not discovered till after the lists had been revised and signed, the Court refused to grant a *mandamus* directing the town clerk to alter the burgess roll. *Quære* whether the proper remedy was not a *mandamus* to the revising barrister. *Ex parte Keay*, (1891) 66 L. T. 323; 56 J. P. 470. It is the duty of the town clerk

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to cause the burgess roll to be printed and to keep copies of it on sale (s. 48). The burgess roll is the local government register of electors for the borough. See s. 17 of the Interpretation Act, 1889, *post*, p. 479.

(*b*) See *Budge* v. *Andrews*, *ante*, p. 20. If a burgess roll is not made in due time, the old roll continues in force until the new roll is made (s. 71).

(*c*) As to the division of the borough or a ward into polling districts, see s. 64.

(*d*) See this section set out, *post*, p. 343.

County Councils.—The clerk of the peace of every county is to make up the county register, which includes all persons registered as burgesses or county electors in the county, both for the county and for each electoral division, and the town clerk is to deliver to him for this purpose so many copies of the revised list of burgesses as he may require. County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (1). Section 45 of the Municipal Corporations Act, 1882, is made applicable to the county register with the necessary modifications, but a county elector is not to be prevented from being registered in more than one division register. *Ibid.*, s. 7 (2), (4). This provision, however, does not enable a county elector to vote in more than one electoral division of the same county at the same election of county councillors. See s. 51 (2), *post*. *Knill* v. *Towse*, (1890) 24 Q. B. D. 697; 59 L. J. Q. B. 455; 63 L. T. 47; 38 W. R. 521; 54 J. P. 789; 6 T. L. R. 310.

The county register is to be completed before the 20th of December in every year and to come into operation on the next 1st day of January; and the burgess lists forming the burgess roll, which comes into operation on the 1st of November in every year, are on and after that day until the next 1st day of January to form part of the county register in substitution for the former burgess lists. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 2, *post*.

In the case of a parish which is not situate in a municipal borough, whether it is situate within a parliamentary borough or not, the lists and register of voters are to be made out alphabetically, but are to be framed in parts for polling districts and electoral divisions in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts and as electoral division or ward lists. County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (2) (*e*), amended by s. 76 (1) of the Local Government Act, 1888.

Arrangement of lists and rolls.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate.

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

Where a borough is co-extensive with a parliamentary division, the County Council can now order the lists of voters to be made out according to the order in which the qualifying premises appear in the rate book. See s. 4 (3) of the County Electors Act, 1888 (51 & 52 Vict. c. 10), *post*.

Correction of burgess roll.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act.

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two months after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a mandamus to the mayor to insert his name in the burgess roll; and

thereupon the court shall inquire into the title of the applicant to be enrolled.

(3.) If the court grants a mandamus, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.

The section here referred to is set out *post*, p. 343.

The parish burgess lists are now revised in every case by the revising barrister, so that sub-sections (2) and (3) of this section have become obsolete. See note (*b*) to s. 44, *ante*.

Printing and sale of burgess roll and other documents.

48.—(1.) The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund.

A town clerk who neglects or refuses to receive, print, and publish a parish burgess list or list of claimants or respondents is liable to a penalty under s. 75.

Section 30 of the Act of 1878, *post*, p. 341, provides that one half of the moneys received in respect of the burgess lists is to be applied in manner directed by the Parliamentary Registration Acts, and the other half is to be paid to the borough fund.

County Councils.—The provisions of this section are applied to the county register by s. 7 (2) of the County Electors Act, 1888 (51 & 52 Vict. c. 10, *post*).

Separate list of persons qualified to be councillors but not to be burgesses.

49.—(1.) The overseers of each parish shall at the same time that they make the parish burgess list make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough.

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

As to the qualification of persons whose names are entered in this list for the office of councillor, see s. 11 (2) (*b*), *ante*; and as to the measurement of the distance, see s. 231, *post*.

County Councils.—A similar list of persons occupying property in a county and residing within fifteen miles but more than seven miles from the county is to be made out in accordance with this section. County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 12. That provision however does not apply to any person occupying property in a borough. Local Government Act, 1888, s. 76 (6).

In the county of London there is no need for any such list, for the persons whose names would in the case of any other county be placed in the non-resident list are entitled to be registered as county electors. Local Government Act, 1888, s. 77.

Election of Councillors.

Borough and ward elections.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

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(2.) Where a borough has wards, there shall be a separate election of councillors for each ward.

Although there is to be a separate election for each ward, any notice required to be given in connection with the election may comprise matter necessary for several wards (s. 65).

County Councils.—The members of a county council are to be elected in like manner as the council of a borough divided into wards, but the divisions of the county for the purpose of the election are to be called electoral divisions and not wards. Local Government Act, 1888, s. 2.

Title to vote.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper, and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise (*a*).

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward (*b*).

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it (*c*).

(*a*) For the rules which regulate the nomination of councillors, see Schedule 3, Part II., *post*.

The burgess roll or ward roll here referred to is the roll which will be in force on the day of election. Schedule 3, Part II., r. 18, *post*. Although the fact that a person's name is on the burgess roll is conclusive as to his right to vote, he is not qualified for election unless he is entitled to be enrolled as a burgess. See note (*e*) to s. 11. As to the right of women to vote, see s. 63, *post*.

The provisions of ss. 51—59 do not apply to the election of councillors to represent the Universities of Oxford and Cambridge on the councils of the city of Oxford and the borough of Cambridge under 52 & 53 Vict. c. xv. and 52 & 53 Vict. c. cxvi., *ante*, p. 19.

(*b*) Section 45 (6), *ante*, provides that a burgess is not to be enrolled in more than one ward roll. If, notwithstanding this provision, a burgess is enrolled in more than one ward roll and votes in more than one ward, his first vote is good and the others are bad. *Reg.* v. *Harrald*, (1873) L. R. 8 Q. B. 418; 42 L. J. Q. B. 211; 28 L. T. (N. S.) 767; 21 W. R. 910; 37 J. P. 355.

(*c*) Persons found guilty of corrupt or illegal practices, or of illegal employment, payment, or hiring, at a municipal election are prohibited from voting at such election by 47 & 48 Vict. c. 70, s. 22, *post*, p. 390. See also note (*m*) to s. 9, *ante*, as to persons prohibited from voting under other Acts of Parliament.

County Councils.—Although a county elector may be registered in more than one division register, this section prevents him from voting in more than one electoral division of the county at the same election. See the note to s. 45, *ante*.

Day of election.

52. The ordinary day of election of councillors shall be the first of November.

If the 1st of November is a Sunday, the election may be held on the following day (s. 230). In cases where an election has not been held on the appointed day a remedy is provided by s. 70.

County Councils.—The ordinary day of election of county councillors is such day between the 1st and 8th of March as the council may fix, or if no date is so fixed, the 8th of March. See the note to s. 13, *ante*.

Returning officer at election.

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor.

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the Council at the meeting of the ninth of November.

The case of the returning officer's illness, absence, or incapacity to act is provided for by s. 67. See the note to that section as to the case of a returning officer who is a candidate for election.

A mayor or alderman who neglects or refuses to conduct or declare an election is liable to a fine under s. 75.

The election will not be avoided by any defect in the title of the returning officer (s. 42).

Sub-section (2) does not apply to the first election held after the division of a borough into wards, in which case the returning officer is to be the mayor or a person appointed by him. Section 30 (7), *ante*.

County Councils.—The returning officer at a county council election which is held for a county division is appointed by the county council, and references in this Act to the mayor or alderman and to the town clerk are to be construed so far as relates to any such election as referring to the returning officer or his deputy. Local Government Act, 1888, s. 75 (2), (4), (5). In the case of an election for a borough division (*i.e.* for a division which is co-extensive with or wholly comprised in a borough), the mayor or some person appointed by him, or if the mayor is dead or absent or otherwise incapable of acting, an alderman appointed by the borough council, is to be the returning officer, and so far as respects such election is to follow the instructions of the county returning officer and return the names of the persons elected to him. References to the town clerk are not to be construed as referring to the returning officer in this case. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 3, *post*.

The county returning officer must return the names of the persons elected to the clerk of the county council. Local Government Act, 1888, s. 75 (8). He has power to appoint a deputy in writing for all or any of the purposes of the election. *Ibid.*, s. 75 (3).

As respect matters subsequent to the election, references to the town clerk in the Act of 1882 are to be construed in every case as referring to the clerk of the county council. *Ibid.*, s. 75 (5).

Notice of election.

54. Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

"Nine days at least" means nine clear days, so that as the ordinary day for the election of councillors is the 1st of November (see s. 52), the last day for giving the notice is generally October 22nd. If the 1st of November is a Sunday, the election may be held on the 2nd, as provided by s. 230, *post*, and the nine days are to be reckoned with reference to that date. A mistake in the notice may avoid the election. See *Howes* v. *Turner*, (1876) 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58; 40 J. P. 680.

As to the mode of fixing notices on the town hall, see s. 232. Matters relating to several wards may be comprised in one notice (s. 65).

County Councils.—In the case of a county council election the notice is to be given by the returning officer or his deputy, except in the case of an election for an electoral division which is co-extensive with or wholly comprised in a municipal borough, in which case it is to be given by the town clerk. Local Government Act, 1888, s. 75 (5); County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 3.

Nomination of candidates.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

See this schedule, *post*, p. 174. Non-compliance with the rules will not invalidate the election if it was conducted in accordance with the principles laid down in the body of the Act (s. 72).

Relation of nomination to election.

56.—(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

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(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

A valid nomination is one to which no objection has been made, or the objections to which have been disallowed by the mayor. *Pritchard* v. *Mayor of Bangor*, (1888) 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564.

As to the mode in which the validity of a nomination may be questioned, see the note to Schedule 3, Part II., R. 14, *post*, p. 177.

A person who at the time of his nomination is disqualified for election by reason of his interest in a contract with the council is disqualified for nomination, but that fact does not prevent him from being validly nominated if his nomination is regular in point of form. *Harford* v. *Linskey*, [1899] 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 63 J. P. 263; 15 T. L. R. 306. Thus where there are only two nominations, and one of the candidates is admittedly disqualified for this reason, the other candidate is not entitled to claim that he is to be deemed to be elected under this section, and if the disqualified candidate is elected his election can only be questioned by an election petition. *Hobbs* v. *Morey*, [1904] 1 K. B. 74; 73 L. J. K. B. 47; 89 L. T. 531; 52 W. R. 348; 68 J. P. 132; 2 L. G. R. 7; 20 T. L. R. 50. As to the right of the unsuccessful candidate to claim the seat in such a case where the electors had notice of the disqualification, see note (*d*) to s. 87, *post*.

The nomination of a person absent from the United Kingdom is void unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination. Schedule 3, Part II., R. 16. See the notes to that rule, *post*, p. 177.

Where no valid nomination was made to fill a casual vacancy, the Court granted a *mandamus* to hold an election. *Reg.* v. *Mayor of Stratford-upon-Avon*, and *Re West Sussex County Council*, *ante*, p. 53.

Persons deemed to be re-elected under this section appear to be entitled to claim exemption from accepting the office under s. 34 (3).

County Councils.—At a county council election for a county division the duties of the mayor under sub-s. (3) are to be performed by the returning officer appointed by the county council. Local Government Act, 1888, s. 75 (4).

Publication of uncontested election.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

The hour is to be determined by Greenwich time. 43 & 44 Vict. c. 9, s. 1.

Mode of conducting poll at contested election. 35 & 36 Vict. c. 33.

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors (*a*).

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

Part III. Section 58.

[(3.) *The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day* (*b*).

(4.) *But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock* (*b*).]

(5.) Where an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing (*c*).

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorize the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election (*d*).

(*a*) The Ballot Act is set out *post*, p. 257. As to the case where an election to fill a casual vacancy is held at the same time as the ordinary annual election, see the note to s. 40.

(*b*) Sub-sections (3) and (4) are now superseded by the Elections (Hours of Poll) Act, 1885 (48 & 49 Vict. c. 10), which requires that the poll at every parliamentary or municipal election shall commence at 8 a.m. and be kept open till 8 p.m. and no longer. This enactment has been held to mean that no ballot papers may be supplied to voters after 8 p.m., but a voter who has received his paper before that hour is entitled to deposit it in the ballot box. *Medhurst* v. *Lough*, (1901) 17 T. L. R. 210.

(*c*) If the returning officer is enrolled as a burgess he is entitled to vote in the same way as any other elector; and whether he is so enrolled or not he is entitled to give a casting vote under this section. Where there was an equality of votes and no casting vote was given, the Court granted a *mandamus* to hold a fresh election. *Crone* v. *Waugh*, The Times, June 3rd, 1892. See, however, *Ex parte Barnes*, The Times, February 7th, 1893.

(*d*) The meaning of this sub-section, which is reproduced from the repealed section 20 (6) of the Ballot Act, 1872, is not very clear. The Ballot Act authorizes the appointment of two classes of agents at a municipal election, viz., polling agents appointed for the purpose of detecting personation (see s. 24 and r. 57 of the First Schedule to that Act, *post*, pp. 265, 274), and agents appointed to attend the counting of the votes under r. 31 of the First Schedule to that Act. No provision is made by the Ballot Act for the appointment of election agents at a municipal election, and the employment of a paid election agent at such an election is made illegal by s. 13 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, *post*, p. 383.

County Councils.—The hours of the poll at a county council election are those fixed by the Elections (Hours of Poll) Act, 1885, which are set out in note (*b*), *supra*. Local Government Act, 1888, s. 75 (11).

Questions which may be put to voters.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them:

(a) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*]?

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(b) Have you already voted at the present election [*add, in case of an election for several wards,* in this or any other ward]?

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

A person who applies for a ballot paper in the name of another person, or who, having already voted, applies at the same election for a ballot paper in his own name, is guilty of personation. See s. 24 of the Ballot Act, 1872, *post.* On an indictment for making a false answer, it is not necessary to prove that the person who required the questions to be put was expressly appointed by the candidate as his agent. *Reg.* v. *Spalding,* (1842) Car. & M. 568.

As to the right of a candidate to be present in the polling station, see the note to the Ballot Act, 1872, Schedule 1, Part I., r. 51, *post.*

A burgess may not vote in more than one ward. See s. 51 (2), *ante.*

County Councils.—In the application of this section to county council elections, "county electors" is to be substituted for "burgesses," "division" for "ward," and "division register" for "ward roll."

A county elector is not entitled to vote in more than one electoral division of the county at the same election. See the note to s. 45, *ante.*

Election of Aldermen.

Time and mode of election of aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council (*a*).

(2.) The election shall be held immediately after the election of the mayor, or, if there is a sheriff, the appointment of the sheriff (*b*).

(3.) An outgoing alderman, although mayor elect, shall not vote (*c*).

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes (*d*).

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months (*e*).

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

(*a*) The aldermen hold office for six years, and one half of them go out of office in every third year. S. 14, *ante.* As to the quarterly meeting of the council, see Schedule 2, rr. 1 and 2, *post.* If the 9th of November is a Sunday, the meeting may be held on the following day (s. 230).

As to the election of aldermen to represent the Universities on the town councils of Oxford and Cambridge, see the note to s. 14, *ante.*

(*b*) See s. 61. If the election of aldermen is held before that of the mayor, it is

void. *Reg.* v. *McGowan*, (1840) 11 A. & E. 869. As to the appointment of the sheriff, see s. 170.

(*c*) An outgoing alderman who has been elected mayor is not entitled to vote, even if he has made and subscribed the declaration required by s. 35. *Hounsell* v. *Suttill*, (1887) 19 Q. B. D. 498; 56 L. J. Q. B. 502; 57 L. T. 102; 36 W. R. 127; 51 J. P. 440.

An alderman, whose term of office was about to expire, sent in his resignation and paid the fine provided by s. 36, but the council did not declare his office to be vacant in the manner required by sub-s. (2) of that section. At the quarterly meeting he was elected mayor, and subsequently voted at the election of aldermen. It was held that as the council had not declared his office to be vacant, he remained an outgoing alderman, and was therefore not entitled to vote. *Pease* v. *Lowden*, [1899] 1 Q. B. 386; 68 L. J. Q. B. 239; 79 L. T. 672; 63 J. P. 56; 15 T. L. R. 147.

An outgoing alderman, however, may be entitled to give a casting vote under sub-s. (6) of this section.

(*d*) All the members of the council except the outgoing aldermen are entitled to vote. Section 14 (1).

A signature with the initials only of the Christian name is sufficient. See *Reg.* v. *Mayor of Hartlepool*, (1851) 2 L. M. & P. 666; 21 L. J. Q. B. 71.

Where a voting paper was made out by the town clerk in the following form: "I the undersigned A. B. do hereby vote for . . .," and was inadvertently handed to and signed by a voter other than the one in whose name it was made out, parol evidence was admitted to explain the ambiguity, and the voting paper was held to be valid. *Summers* v. *Moorhouse*, (1884) 13 Q. B. D. 388; 53 L. J. Q. B. 564; 51 L. T. 290; 32 W. R. 826; 48 J. P. 424.

The requirements of this sub-section were held to be complied with where the voting papers were collected by the town clerk and handed by him to the chairman. *Baxter* v. *Spencer*, (1895) 64 L. J. Q. B. 644; 72 L. T. 838; 59 J. P. 376; 11 T. L. R. 365.

As to misnomer or inaccurate description of a candidate in a voting paper, see s. 241, *post*, and the cases cited in the note thereto.

Where the requirements of this sub-section with regard to the mode of voting were not observed, the Court ordered a fresh election to be held. *Reg.* v. *Mayor of Wilton*, (1886) 34 W. R. 273.

(*e*) As to the person who is to be the chairman of the meeting, see Schedule 2, r. 9, *post*. Unless he is disqualified as an outgoing alderman or otherwise, the chairman is entitled to vote in the first instance, in addition to his right to give a casting vote in case of an equal division. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499; 38 Sol. J. 309; 10 T. L. R. 344. There is nothing to prevent the chairman from giving a casting vote to take effect in case the votes should thereafter turn out to be equal owing to one or more of them being disallowed on an election petition, although at the time when such casting vote is given the votes as they stand are not equal. *Bland* v. *Buchanan*, [1901] 2 K. B. 75; 70 L. J. K. B. 466; 84 L. T. 390; 49 W. R. 601; 65 J. P. 404; 17 T. L. R. 348.

County Councils.—The ordinary day of election of county aldermen and the day for holding a quarterly meeting is the 16th of March or such other day within ten days after the ordinary day of retirement of county councillors (*i.e.*, the 8th March in every third year) as the county council may from time to time fix. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1, *post*.

A county alderman may not, as such, vote in the election of a county alderman. Local Government Act, 1888, s. 2 (2) (*c*).

Election of Mayor.

Time and mode of election of mayor.

61.—(1.) The ordinary day of election of mayor shall be the ninth of November.

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman.

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(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote.

The mayor's term of office is one year, s. 15 (3). As to the quarterly meeting of the council, see Schedule 2, rr. 1 and 2, *post*.

No other business can be transacted at the meeting before the election of the mayor. See *R.* v. *Parkyns*, (1820) 3 B. & Ald. 668; 22 R. R. 519.

As to the chairman's right to vote, see note (*e*) to s. 60. If a salary is attached to the office, a candidate is prohibited from voting by s. 22 (3), *ante*. See *Nell* v. *Longbottom*, cited in note (*c*) to that section.

Where the outgoing mayor is a candidate for re-election, he must not preside at the election. See the cases cited in note (*a*) to s. 12, *ante*.

An outgoing alderman is eligible as mayor. S. 15 (2).

County Councils.—The ordinary day of election of the chairman of a county council is the same as that of the county aldermen (see the note to s. 60), except that in any year which is not the year of election of county councillors (who are elected in every third year) it may be such day in the months of March, April, or May as the county council from time to time determine. County Councils (Elections) Amendment Act, 1900 (63 & 64 Vict. c. 13), s. 2, *post*.

An outgoing county alderman may not as alderman vote in the election of a chairman. Local Government Act, 1888, s. 75 (10).

Election of Auditors and Assessors.

Time and mode of election of auditors and assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.

(2.) The ordinary day of election of revising assessors shall be the first of March.

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(4.) An elector shall not vote for more than one person to be elective auditor or revising assessor.

(5.) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.

(6.) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors.

As to the borough auditors, see s. 25, *ante*.

If the 1st of March is a Sunday, the election may be held on the following day (s. 230).

Revising assessors are no longer elected. See the note to s. 29, *ante*.

County Councils.—The provisions as to borough auditors do not apply to county councils. Local Government Act, 1888, s. 75 (16) (*b*).

Supplemental and Exceptional Provisions.

Part III. Section 63.

Right of women to vote.

63. For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

As to the right to vote at municipal elections, see s. 51, *ante*.

This section removes the disqualification of women for voting by reason of their sex, so that an unmarried woman who possesses the qualification required by s. 9 is entitled to be enrolled and to vote as a burgess; and this right is extended by s. 3 of the County Electors Act, 1888 (*ante*, p. 7, note (*b*)), to women who possess the ten pounds occupation qualification. The disability, however, which arises at common law from coverture is not affected, and a married woman is still incapable of voting. *Reg.* v. *Harrald*, (1872) L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. (N. S.) 616; 20 W. R. 328; 36 J. P. 438. *Semble*, a woman who was unmarried at the time when she was enrolled as a burgess, but who has married before the election, is not entitled to vote. *Ibid.* The disqualification by reason of coverture is removed for the purposes of the Local Government Act, 1894, by s. 43 of that Act, *post*, p. 561; but that provision does not enable a married woman to vote at a municipal election.

This section relates only to the right to vote, and does not remove the common law disqualification of a woman for being elected a councillor; but this disqualification has now been removed in the case of an unmarried woman by the Qualification of Women (County and Borough Councils) Act, 1907 (7 Edw. 7, c. 33), *post*, p. 647. See note (*e*) to s. 11, *ante*.

County Councils.—The provisions of this section are extended to so much of every county as is not comprised within the limits of a municipal borough by s. 2 of the County Electors Act, 1888 (51 & 52 Vict. c. 10). Unmarried women are therefore entitled to be enrolled and to vote as county electors.

Polling districts.

64. The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, as far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

As to the preparation of the parish burgess lists, see ss. 44—49.

County Councils.—The powers which are given to county councils by this section for dividing electoral divisions into polling districts for the purpose of county council elections may be exercised by them from time to time and as often as they think fit, and such powers are to be deemed to include the power of altering any polling district from time to time. Polling Districts (County Councils) Act, 1908 (8 Edw. 7, c. 13), s. 2.

In a parish which is not situate within a municipal borough the lists of voters are to be framed in parts for polling districts. See the note to s. 45, *ante*.

Notices as to elections.

65. Any notice required to be given in connection with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

Revising assessors are no longer elected. See the note to s. 29, *ante*. As to ward elections, see s. 50.

County Councils.—Matter necessary for several electoral divisions may be comprised in one notice. As to elective auditors, see the note to s. 62.

Time for filling casual vacancies.

66.—(1.) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

Part III. Section 66.

As to the holding of elections to fill casual vacancies, see s. 40. If an election is not held within the fourteen days, an application may be made to the High Court to appoint a day for the election under s. 70. As to the publication of the notice of election, see s. 54.

This section does not apply to elections held to fill casual vacancies among the councillors elected to represent the Universities of Oxford and Cambridge under 52 & 53 Vict. c. xv. and 52 & 53 Vict. c. cxvi., *ante*, p. 19.

County Councils.—In the case of a casual vacancy in the office of county councillor, the notice is to be given to the returning officer and the day of election is to be fixed by him if the vacancy occurs in a county division; if it occurs in a borough division the notice is to be given to the mayor or the town clerk and the day of election is to be fixed by the mayor. Local Government Act, 1888, s. 75 (4), (5); County Councils (Elections) Act, 1891, s. 3. If a casual vacancy occurs in the office of county alderman, the notice is to be given to the chairman or the clerk of the council and the day of election is to be fixed by the chairman.

Illness, &c. of mayor or returning officer.

67.—(1.) If the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor.

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

Where the mayor of a borough not divided into wards was a candidate for re-election as a town councillor, it was held that he was incapable of acting as returning officer at the election, and that an alderman was rightly appointed to act in his place. *Reg.* v. *White*, (1867) L. R. 2 Q. B. 557; 36 L. J. Q. B. 267; 16 L. T. (N. S.) 828; 15 W. R. 988; 31 J. P. 595.

As to the returning officer at a ward election, see s. 53 (2).

County Councils.—The powers and duties of the mayor as to elections are to be executed in the case of a county council election by the returning officer appointed by the county council, except where the election is held for an electoral division which is co-extensive with or wholly comprised in a municipal borough. See the note to s. 53, *ante*.

Election of councillor in more than one ward.

68. If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

A casual vacancy will arise in the ward for which the councillor chooses not to serve. See s. 40 (3).

County Councils.—In the case of a county council election the returning officer is to be substituted in this section for the town clerk and the mayor. Local Government Act, 1888, s. 75 (4), (5).

Elections not in churches.

69. A municipal election shall not be held in any church, chapel, or other place of public worship.

The term "municipal election" is defined in s. 7.

Omission to hold election, or election void.

70.—(1.) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time (*a*).

(2.) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court (*b*).

(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election (*c*); and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

(*a*) As to the appointed day for the election of councillors, aldermen, mayor, and elective auditors, see ss. 52, 60, 61, and 62; and as to the appointed time for filling casual vacancies, see s. 66.

(*b*) For instances in which a *mandamus* has been granted, see the cases cited in the notes to ss. 40 and 58, and see *Re Richmond Borough*, The Times, March 24th, 1893. Where one of the candidates at a county council election died between the day of nomination and the poll, the Court granted a *mandamus* directing the returning officer to countermand the notice of the poll, and subsequently made an order under this section fixing the date of the poll. *Reg.* (or *Westacott*) v. *Stewart*, [1898] 1 Q. B. 552; 67 L. J. Q. B. 421; 78 L. T. 256; 62 J. P. 229; 14 T. L. R. 261. As to the procedure on an application for a *mandamus*, see s. 225.

(*c*) As to fixing notices on the town hall, see s. 232. There must be six clear days' notice, exclusive of Sundays and the other days mentioned in s. 230, *post*. See *Howes* v. *Turner*, *ante*, p. 59.

Burgess roll to be in operation until revision of new burgess roll.

71.—(1.) If a parish burgess list is not made or revised in due time the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

As to the preparation and revision of the parish burgess lists, and the making of the burgess roll, see ss. 44 and 45, *ante*. The burgess lists must be revised between the 8th September and the 12th October, both inclusive. 51 & 52 Vict. c. 10, s. 6.

County Councils.—This section is applied to the county register by s. 7 of the County Electors Act, 1888 (51 & 52 Vict. c. 10).

Non-compliance with rules.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

The rules in Part II. of the Third Schedule regulate the nomination of councillors. In order to render an election invalid, the non-compliance with the rules or mistake in the use of the forms must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must satisfy the tribunal that it affected or might have affected the result of the election. See *Woodward* v. *Sarsons* and other cases cited in the note to s. 13 of the Ballot Act, 1872, *post*, p. 263.

The omission of the name of the electoral division in a nomination paper used at a county council election was held to be a mistake in the use of the form within the meaning of this section. *Marton* v. *Gorrill*, (1889) 23 Q. B. D. 139; 58 L. J. Q. B. 329; 60 L. T. 867; 54 J. P. 181; 5 T. L. R. 443.

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As to a mistake in the notice of the election, see *Howes* v. *Turner*, *ante*, p. 59; and as to misnomer or inaccurate description of any person or place, see s. 241, *post*, and the note thereto.

County Councils.—Part I. of the Eighth Schedule is incorporated by s. 75 of the Local Government Act, 1888. Part II., which contains forms relating to elections, is not incorporated, but this section has been held to apply where an inaccurate form of nomination paper was used at a county council election. *Marton* v. *Gorrill*, *supra*.

Election valid unless questioned within twelve months.

73. Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a quo warranto, shall be deemed to have been to all intents a good and valid election.

This section does not affect the liability of a disqualified person to a fine under s. 41 for acting in a corporate office after the expiration of twelve months from the election. *De Souza* v. *Cobden*, [1891] 1 Q. B. 687; 60 L. J. Q. B. 533; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565; 7 T. L. R. 441.

A municipal election may be questioned by an election petition on the grounds mentioned in s. 87, and may not be questioned on any of those grounds in any other manner. As to the cases in which proceedings in the nature of a *quo warranto* may be taken, see the notes to s. 225, *post*.

Offences in relation to nomination papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Offences in relation to lists and elections.

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action (*a*).

(2.) If—

(a) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act; or

(b) A town clerk neglects or refuses to receive, print, and publish a parish burgess list or list of claimants or respondents, as required by this Act; or

(c) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action (*b*).

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff (*c*).

(*a*) The lists are now revised by the revising barrister. See note (*b*) to s. 44.

An alderman was held not to be liable to a fine where he recorded the vote of a burgess who in fact had not voted. *Jeffreys* v. *Higgins*, (1853) 1 C. L. R. 351; 21 L. T. (O. S.) 73; 1 W. R. 304.

The action is required by sub-s. (3) to be brought within three months from the neglect or refusal. Section 224, *post*, does not apply to such an action, which may be brought by anyone. As to the proceedings in such an action, see the note to s. 226, *post*.

(*b*) The duties of the overseers and the town clerk which are here referred to will be found in ss. 44, 45, and 48, *ante*. As to the inspection of documents, see s. 233. The liability to a fine is incurred by the mere omission to perform the duty, without any wilful default. *Reg.* v. *Burrell*, (1840) 12 A. & E. 460; 9 L. J. Q. B. 337; 4 P. & D. 207. An overseer who has been fined for neglect to make a parish burgess list is not liable to a second fine for refusing to allow such a list to be inspected. *Gregory* v. *Fell*, (1842) 6 Jur. 422.

(*c*) As to the right of the corporation to recover half the fine from an informer who has received the whole of it, see *Mayor of Harwich* v. *Gant*, (1855) 5 E. & B. 182.

County Councils.—Sub-s. (1) of this section applies to the returning officer at an election of county councillors, as to whom see the note to s. 53, *ante*; and sub-s. (2) (b) applies to the clerk of the county council.

Revival of former law on expiration of Ballot Act.

76.—(1.) If the Ballot Act, 1872, ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

The Ballot Act was originally in force only until the 31st December, 1880 (see s. 33 of that Act, *post*); but it has been continued from time to time by successive Expiring Laws Continuance Acts, and is now in force until the 31st December, 1910, by virtue of 9 Edw. 7, c. 46.

PART IV.

Corrupt Practices and Election Petitions.

[The whole of this Part (ss. 77—104), as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, is made applicable to county councils by s. 75 of the Local Government Act, 1888.]

Corrupt Practices (*a*).

Definitions.

77. In this Part—

"Bribery," "treating," "undue influence," and "personation," include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections (*b*):

["*Corrupt practice*" *means bribery, treating, undue influence, or personation* (*c*):]

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office (*d*):

["*Canvasser*" *means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal*

Part IV. Section 77.

election, or to vote or to abstain from voting for a candidate at a municipal election (c) :]

" Voter " means a burgess or a person who votes or claims to vote at a municipal election :

" Election court " means a court constituted under this Part for the trial of an election petition :

" Municipal election petition " or " election petition " means a petition under this Part complaining of an undue municipal election :

" Parliamentary election petition " means a petition under the Parliamentary Elections Act, 1868 :

31 & 32 Vict. c. 125.

" Prescribed " means prescribed by general rules made under this Part :

" Borough " and " election " when used with reference to a petition mean the borough and election to which the petition relates.

(*a*) The provisions of this Part relating to corrupt practices have been for the most part superseded by those contained in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), which is set out *post*, p. 377.

General rules for the execution of this Part of the Act may be made under s. 100. The rules now in force are set out *post*, p. 365.

(*b*) Definitions of " bribery," " treating," " undue influence," and " personation " will be found in the third schedule to the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), *post*, p. 403.

(*c*) The definitions of " corrupt practice " and " canvasser " in this section have been repealed by 47 & 48 Vict. c. 70, s. 38, *post*, p. 401. " Corrupt practice " is defined by s. 2 of that Act, but the definition of " canvasser " has not been replaced by any other definition.

(*d*) As to the meaning of the term " candidate," see *Harford* v. *Linskey*, [1899] 1 Q. B. 852 ; 68 L. J. Q. B. 599 ; 80 L. T. 417 ; 63 J. P. 263 ; 15 T. L. R. 306 ; and as to the time at which a candidature is to be taken to have begun, see the note to 47 & 48 Vict. c. 70, s. 4, *post*, p. 379.

General penalties for corrupt practices.

78. [*A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a parliamentary election.*]

This section has been repealed by 47 & 48 Vict. c. 70, s. 38, and is replaced by s. 2 of that Act, *post*, p. 377.

Disqualifications and avoidance of election for corrupt practices by candidates.

79.—[(1.) *Where it is found by the report of an election court that a corrupt practice has been committed by or with the knowledge and consent of a candidate at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void ; and he shall (whether elected or not) during seven years from the date of the report be subject to the following disqualifications :*

He shall be incapable of—

(*a*) *Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a burgess :*

(*b*) *Acting as a justice or holding any judicial office :*

(*c*) *Being elected to or sitting or voting in Parliament :*

(*d*) *Being registered or voting as a parliamentary voter :*

(*e*) *Being employed by a candidate in a parliamentary or municipal election :*

(*f*) *Acting as overseer or as guardian of the poor.*

(2.) *If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.*

(3.) *If after a person has become disqualified under this Part any witness on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may, on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.*]

This section has been repealed by 47 & 48 Vict. c. 70, s. 38, and is replaced by s. 3 (1) of that Act, *post*, p. 378.

Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part.

80. [*If it is found by an election court that a candidate has by an agent been guilty of a corrupt practice at a municipal election, or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any corporate office in the borough, and if he was elected his election shall be void.*]

This section has been repealed by 47 & 48 Vict. c. 70, s. 38, and is replaced by s. 3 (2) of that Act, *post*, p. 378.

Avoidance of election for general corruption.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

Under the Acts relating to corrupt practices an election can only be avoided where such practices were committed by a candidate or his agent; but an election may be avoided at common law by general corruption, bribery, treating, or intimidation shown to have prevailed to such an extent that there could not have been a free election, even though the candidates and their agents had nothing to do with such practices. See *Lichfield*, (1869) 1 O'M. & H. 26; 20 L. T. (N. S.) 11; *Bradford*, (1869) 1 O'M. & H. 35; 19 L. T. (N. S.) 723; *Staleybridge*, (1869) 1 O'M. & H. 66; *Salford*, (1869) 1 O'M. & H. 133; *Nottingham*, (1869) 1 O'M. & H. 245; *Galway*, (1872) 2 O'M. & H. 46; *Dudley*, (1874) 2 O'M. & H. 115; *Ipswich*, (1886) 4 O'M. & H. 70; 2 T. L. R. 477. An election may also be avoided at common law on the ground that there was no real electing at all; for instance, through polling stations being demolished or the means of voting not being supplied, or on the ground that the election was not carried out under the subsisting election laws but under some other method. *Woodward* v. *Sarsons*, (1875) L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. 867; 39 J. P. 776.

Paid agents and canvassers.

82.—[(1.) *A burgess of a borough shall not be retained or employed for payment or reward by or on behalf of a candidate at a municipal election for that borough or any ward thereof as a canvasser for the purposes of the election.*

(2.) *If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.*

(3.) *An agent or canvasser retained or employed for payment or reward*

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for any of the purposes of a municipal election shall not vote at the election, and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.]

This section has been repealed by 47 & 48 Vict. c. 70, s. 38, and is replaced by s. 13 of that Act, *post*, p. 383.

Payment for conveyance of voters.

83. [*If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds.*]

This section has been repealed by 47 & 48 Vict. c. 70, s. 38, and is replaced by s. 4 of that Act, *post*, p. 378.

Prosecution for corrupt practices.

84.—[(1.) *The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence, or personation at a municipal election, with compensation for trouble and loss of time, shall, unless the court otherwise directs, be allowed, paid, and borne as in cases of felony.*

(2.) *The clerk of the peace of the borough, or, if there is none, of the county in which the borough is situate, shall, if so directed by an election court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Part at the election.*]

This section has been repealed by 47 & 48 Vict. c. 70, s. 38, and is replaced by s. 28 of that Act, *post*, p. 394.

Striking off votes.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

This provision is extended by 47 & 48 Vict. c. 70, s. 22, *post*, p. 390, to the votes of persons guilty of an illegal practice or of illegal employment, payment, or hiring at a municipal election.

Personation.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

See s. 24 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), and the note thereto, *post*, p. 265.

Election Petitions.

Power to question municipal election by petition.

87.—(1.) A municipal election may be questioned by an election petition on the ground—

(a) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation (*a*); or

(b) That the election was avoided by corrupt practices or offences against this Part committed at the election (*b*); or

(c) That the person whose election is questioned was at the time of the election disqualified (*c*); or

(d) That he was not duly elected by a majority of lawful votes (*d*).

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition (*e*).

(*a*) For the definition of the term "municipal election," see s. 7, *ante*.

As to the avoidance of an election by general bribery, treating, undue influence, or personation, see the note to s. 81.

(*b*) A municipal election may also be questioned under 47 & 48 Vict. c. 70, s. 8, *post*, p. 381, by a petition alleging an illegal practice as defined by s. 4 of that Act. The petition need not question the election of the whole of the candidates who have been returned as elected. See *Line* v. *Warren*, *post*, p. 75.

(*c*) The term "disqualified" applies to the case of a candidate who did not possess the qualification which is required by s. 11, as well as to that of one who was subject to one of the disqualifications specified in s. 12. See *Middleton* v. *Simpson*, (1880) 5 C. P. D. 183; 49 L. J. C. P. 312; 42 L. T. 55; 28 W. R. 629; 44 J. P. 251; and see *Reg.* v. *Williams*, (1894) 64 L. J. M. C. 34; 43 W. R. 140; 11 T. L. R. 17.

The nomination is an essential part of the election, and a person who at the time of his nomination had an interest in a contract with the council is disqualified both for nomination and for election, even though he may have got rid of his disqualification before the day fixed for the poll. *Harford* v. *Linskey*, [1899] 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 63 J. P. 263; 15 T. L. R. 306; *Ford* v. *Newth*, [1901] 1 Q. B. 683; 70 L. J. K. B. 459; 84 L. T. 354; 49 W. R. 345; 65 J. P. 391; 17 T. L. R. 325.

Where an objection was made to the nomination paper of a successful candidate on the ground that it had been delivered out of time, and this objection was disallowed by the mayor, it was held that the election could be questioned by an election petition on the ground that the candidate was disqualified for election. *Howes* v. *Turner*, (1876) 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58; 40 J. P. 680. See also *Monks* v. *Jackson*, (1876) 1 C. P. D. 683; 46 L. J. C. P. 162; 35 L. T. 95.

(*d*) In this case the petition will generally involve a scrutiny, as to which see s. 100 (3), *post*. Votes given for a candidate who is disqualified for election will be considered as thrown away, and the candidate with the next number of votes will be declared elected on an election petition where the disqualification was notorious or notice of it was published before the election. This rule, however, applies only where the disqualification is founded on some positive and definite fact established at the time of the polling, so as to lead to the fair inference of wilful perverseness on the part of the electors voting for the disqualified person. *Gosling* v. *Veley*, (1847) 7 Q. B. 406; 16 L. J. Q. B. 201; *Drinkwater* v. *Deakin*, (1874) L. R. 9 C. P. 626; 30 L. T. (N. S.) 832; 38 J. P. 808; *Beresford-Hope* v. *Lady Sandhurst*, (1889) 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. 150; 37 W. R. 548; 53 J. P. 805; 5 T. L. R. 472; *Cox* v. *Ambrose*, (1890) 60 L. J. Q. B. 114; 55 J. P. 23; 7 T. L. R. 59. Where the incapacity is one of status, as in the case of a woman elected a county councillor before the Qualification of Women (County and Borough Councils) Act, 1907, it requires no proof and the voters will be taken to have been aware of it. *Beresford-Hope* v. *Lady Sandhurst*, *supra*. In other cases where the fact of incapacity has to be ascertained, if a voter has notice of facts which in law incapacitate the candidate and persists in voting for him, his vote is thrown away, whether he was aware of the legal consequences of those facts or not. *Beresford-Hope* v. *Lady Sandhurst*, *supra* (overruling *Reg.* v. *Mayor of Tewkesbury*, (1868) L. R. 3 Q. B. 629; 37 L. J. Q. B. 288; 18 L. T. (N. S.) 851; 16 W. R. 1200; 32 J. P. 580). Bribery by a candidate at an election is an offence which will avoid the election, but is not a disqualification, so that votes given for him with notice of the bribery are not thrown away. *Drinkwater* v. *Deakin*, *supra*. As to the mode in which notice of disqualification should be published to the electors, see *Cox* v. *Ambrose*, *supra*.

Where an objection to a nomination paper has been improperly allowed by the mayor under Schedule 3, Part II., r. 9, *post*, the election may be questioned on the ground that the respondent was not duly elected by a majority of lawful votes, because the votes might have been given differently if the objection had not been allowed. *Budge* v. *Andrews*, (1878) 3 C. P. D. 510; 47 L. J. C. P. 586; 39 L. T. 166; 42 J. P. 744. See the notes to Schedule 3, Part II., r. 14, *post*, p. 177.

At an election for a school board where there were eight candidates for five seats, the five candidates who stood highest on the poll were declared elected. A petition

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was presented by the candidate who was sixth against the election of the candidate who was fifth, and a recount was claimed. The Court ordered the recount to be limited to the votes given for the petitioner and the respondent. The result of the recount was to give the petitioner a majority, and it was held that he was entitled to the seat without recounting the votes given for the first four candidates. *Monkswell* v. *Thompson*, [1898] 1 Q. B. 479; 67 L. J. Q. B. 378; 78 L. T. 116; 46 W. R. 382; 62 J. P. 212; 14 T. L. R. 224.

Where a petition alleges that an unsuccessful candidate had a majority of lawful votes, the seat may be claimed on his behalf, and if the petition is successful he will be declared to have been elected. In such a case, however, recriminatory charges may be made against the petitioner under s. 93 (10) of this Act. Where the disqualification of a successful candidate was not known to the electors at the time of the election, an unsuccessful candidate is not entitled to claim the seat, and if the petition succeeds a fresh election must be held, unless he can show on a scrutiny that he actually had a majority of the votes. *Hobbs* v. *Morey*, [1904] 1 K. B. 74; 73 L. J. K. B. 47; 89 L. T. 531; 52 W. R. 348; 68 J. P. 132; 2 L. G. R. 7; 20 T. L. R. 50; *Boyce* v. *White*, (1905) 92 L. T. 240; 53 W. R. 430; 3 L. G. R. 787; 21 T. L. R. 244.

(*e*) Where an unsuccessful candidate was declared by the returning officer to be elected on the ground that the successful candidate was disqualified, but the mayor refused to allow the former to vote at the meetings of the council, it was held that he was not entitled to a *mandamus* directing the mayor and corporation to receive his vote, the proper remedy being an election petition. *Pritchard* v. *Mayor of Bangor*, (1888) 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564. At an election of an alderman the mayor, who was a candidate for election, presided and voted for himself and declared himself elected. It was held that his election could be questioned by an election petition under sub-s. (1) (c) or (d) of this section, and that therefore *quo warranto* would not lie. *Reg.* v. *Morton*, [1892] 1 Q. B. 39; 61 L. J. Q. B. 39; 65 L. T. 611; 40 W. R. 109; 56 J. P. 105; 8 T. L. R. 50. See also *Yates* v. *Leach*, (1874) L. R. 9 C. P. 605; 43 L. J. C. P. 377; 30 L. T. 790; 38 J. P. 552; *Reg.* v. *Mayor of Welchpool*, (1876) 35 L. T. 594; *Reg.* v. *Miles*, (1895) 64 L. J. Q. B. 420; 72 L. T. 502; 43 W. R. 445; 59 J. P. 407; 11 T. L. R. 320.

This section applies only to the mode in which an election may be questioned. The remedy by *quo warranto* is not taken away where a corporate office is held by a person who is not qualified for holding the office, even if his disqualification existed at the time of his election, so that he might have been unseated on an election petition. *R.* v. *Beer*, [1903] 2 K. B. 693; 72 L. J. K. B. 608; 89 L. T. 412; 67 J. P. 326; 10 Manson 263; 1 L. G. R. 634; 19 T. L. R. 531. See also *R.* v. *Rowlands*, [1906] 2 K. B. 292; 75 L. J. K. B. 501; 95 L. T. 502; 70 J. P. 463; 4 L. G. R. 983; and see the notes to s. 225, *post*.

Presentation of petition.

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election (*a*).

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition (*b*).

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough (*c*).

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it

may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried (*d*).

(*a*) The term "candidate" is defined by s. 77 as meaning a person elected, or having been nominated, or having declared himself a candidate for election. Persons whose nomination papers had not been delivered to the town clerk by them personally or by their proposers or seconders, as required by Schedule 3, Part II., r. 7, *post*, were held not to have been duly nominated as candidates, and therefore not to be entitled to present a petition. *Monks* v. *Jackson*, (1876) 1 C. P. D. 683; 46 L. J. C. P. 162; 35 L. T. 95. The petitioner and the respondent were nominated in proper form for election to the office of councillor for a ward. The respondent objected to the petitioner's nomination on the ground that he was interested in contracts made with the corporation and was therefore disqualified by s. 12. The lord mayor allowed the objection, and as there was no other candidate declared the respondent to be elected. The Court held that although the petitioner was disqualified for nomination he had been in fact nominated in due form and was therefore a candidate, and as such was entitled to present the petition. *Harford* v. *Linskey*, [1899] 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 63 J. P. 263; 15 T. L. R. 306.

(*b*) A petition may be presented against some only of the persons returned as elected, although the ground of the petition is one which affects the validity of the election as a whole. *Line* v. *Warren*, (1885) 14 Q. B. D. 548; 54 L. J. Q. B. 291; 52 L. T. 258; 49 J. P. 516.

A person who claims to have been elected and who acts in the office may be made a respondent, although he has not been returned as elected. *Yates* v. *Leach*, (1874) L. R. 9 C. P. 605; 43 L. J. C. P. 377; 30 L. T. 790; 38 J. P. 552. But an unsuccessful candidate cannot be made a respondent, although he stood jointly with other candidates who were elected and whose election is questioned by the petition. *Lovering* v. *Dawson*, (1875) L. R. 10 C. P. 711; 44 L. J. C. P. 321; 32 L. T. 819; 39 J. P. 631.

As to the returning officer at an election of councillors, see s. 53. A returning officer is only to be made a respondent where he is charged with misconduct. A complaint that a decision given by him *bonâ fide* as to the validity of a nomination paper is erroneous, is not a complaint of his conduct. *Harmon* v. *Park*, (1880) 6 Q. B. D. 323; 50 L. J. Q. B. 227; 44 L. T. 81; 29 W. R. 750; 45 J. P. 436. As to the liability of a returning officer to pay costs where an election has been avoided through his negligence, see *Wilson* v. *Ingham*, (1895) 64 L. J. Q. B. 775; 72 L. T. 796; 43 W. R. 621; 59 J. P. 614; 11 T. L. R. 452.

(*c*) "Prescribed" means prescribed by general rules (s. 77). The rules now in force, which are made under s. 100, are set out *post*, p. 365. The requirements of this section with regard to the presentation of the petition are peremptory. *Williams* v. *Mayor of Tenby*, *post*, p. 76.

(*d*) As to the mode of reckoning the time, see s. 230. The expression "corrupt practice" is defined by 47 & 48 Vict. c. 70, s. 2, *post*, p. 377. A petition on the ground of an illegal practice may be presented within fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or, in case of an illegal practice subsequent to the election, within twenty-eight days after the date of the act complained of. 47 & 48 Vict. c. 70, s. 25, *post*, p. 392.

A petition cannot be amended after the expiration of the time limited for its presentation by the introduction of a fresh charge amounting in effect to a new petition. *Maude* v. *Lowley*, (1874) L. R. 9 C. P. 165; 43 L. J. C. P. 105; 30 L. T. (N. S.) 168; 22 W. R. 649; 38 J. P. 327; *Clark* v. *Wallond* (or *Lowley*), (1883) 52 L. J. Q. B. 321; 48 L. T. 762; 31 W. R. 551; 47 J. P. 551. But a petition presented within the time limited by this section may be amended by leave under 47 & 48 Vict. c. 70, s. 25, *post*, by adding a charge of an illegal practice within the time limited by that section for the presentation of a petition on the ground of that illegal practice.

County Councils.—In the case of a county council election the clerk of the county council is to be substituted for the town clerk in this section, except where the election is held for a borough division. See the note to s. 53, *ante*.

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Security for costs.

89 —(1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a Judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other (*a*).

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition (*b*).

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5.) An objection to a recognisance shall be decided in the prescribed manner (*c*).

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

(*a*) See rules 16—38 of the General Rules, *post*, p. 368. As to the amount of the security, see rule 26.

(*b*) See rules 14 and 15, *post*, p. 368, as to the mode of service. An affidavit of the time and manner of service must be made under rule 36. Compliance with the requirements of this section as to the giving of security and the serving of the notice is a condition precedent to the hearing of the petition. *Williams* v. *Mayor of Tenby*, (1879) 5 C. P. D. 135; 49 L. J. C. P. 325; 42 L. T. 187; 28 W. R. 616; 44 J. P. 348.

(*c*) See rules 27—34, *post*, p. 370.

Petition at issue.

90. On the expiration of the time limited for making objections, or, after objection made on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

As to the time for making objections to recognisances, see rule 27, *post*, p. 370.

Municipal election list.

91.—(1.) The prescribed officer shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner (*a*).

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the

purposes of this Part the petition shall be deemed to be a separate petition against each respondent (*b*).

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards for the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

(*a*) The prescribed officer is the Master nominated under rule 1, *post*, p. 365. As to the mode in which the list is to be made out and the time for inspection, see rule 39, *post*, p. 371.

(*b*) See *Line* v. *Warren*, *ante*, p. 75. As to the persons who may be made respondents, see the note to s. 88 (2).

Constitution of election court.

92.—(1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions; [*and those judges or two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the election petitions at issue, and shall appoint that number accordingly as commissioners under this Part, and shall assign the petitions to be tried by each*].

(5.) If a commissioner to whom the trial of a petition is assigned dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

The latter part of sub-s. (4) is repealed by 47 & 48 Vict. c. 70, s. 38, *post*, and is replaced by s. 36 (2) of that Act, *post*, p. 401, which provides for the annual appointment of not more than five commissioners.

The election court is a court of record, and as such has power to commit to prison and to inflict fines. *Reg.* v. *Mayor of Maidenhead*, *post*, p. 85. The High Court has no appellate jurisdiction over the commissioner except in the case mentioned in sub-s. (6) of this section, or where a question of law is reserved by him under s. 93 (8). See the note to s. 100 (4).

Part IV. Section 93.

Trial of election petition.

93.—(1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial (*a*).

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial (*b*).

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held (*c*).

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition (*d*).

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows :

(a) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence ;

(b) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part ;

(c) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof (*e*).

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final (*f*).

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius (*g*).

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any

proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person (*h*).

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition (*i*).

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

(*a*) See rules 40—42 of the General Rules, *post*, p. 371. As to the postponement of the trial, see rules 43 and 44. Two or more petitions against the same person may be tried together. *Poole*, (1874) 2 O'M. & H. 123; and see the form of notice of trial in rule 42.

(*b*) Where a system of intimidation prevailed in the borough down to and during the trial of an election petition, the venue was changed. *Sligo*, (1869) 1 O'M. & H. 300. As to changing the place of trial on the ground of the want of suitable accommodation in the borough, see *Collins* v. *Price*, (1880) 5 C. P. D. 544; 49 L. J. C. P. 685. Where no questions of fact were in dispute, the Court made an order for the trial of the petition in London. *Arch* v. *Bentinck*, (1887) 18 Q. B. D. 548; 56 L. J. Q. B. 458; 56 L. T. 360; 35 W. R. 476. But a similar application was refused where the only grounds suggested were convenience and the saving of expense. *Lawson* v. *Chester Master*, [1893] 1 Q. B. 245; 62 L. J. Q. B. 231; 68 L. T. 60; 41 W. R. 221; 57 J. P. 806; 9 T. L. R. 168.

(*c*) No formal adjournment is necessary. Rule 45, *post*, p. 372. The trial is so far as practicable to be continued *de die in diem*. 47 & 48 Vict. c. 70, s. 27, *post*, p. 394.

(*d*) Where the election of any person is declared void and no other person is declared elected in his room, a new election is to be held to supply the vacancy (s. 103, *post*).

(*e*) A report must also be made with regard to illegal practices under 47 & 48 Vict. c. 70, s. 8, *post*, p. 381. As to the right of a person to be heard before he is reported as having been guilty of a corrupt or illegal practice, see 46 & 47 Vict. c. 51, s. 38, *post*, p. 405, which is made applicable to municipal elections by 47 & 48 Vict. c. 70, s. 23, *post*, p. 390.

(*f*) As to the mode in which the application may be made, see rule 48, *post*, p. 373. If leave is given by the High Court, an appeal lies to the Court of Appeal against the decision on a special case under s. 14 of the Judicature Act, 1881 (44 & 45 Vict. c. 68), which is in effect incorporated by s. 242, *post*. *Line* v. *Warren*, (1885) 14 Q. B. D. 548; 54 L. J. Q. B. 291; 52 L. T. 258; 49 J. P. 516; *Beresford-Hope* v. *Lady Sandhurst*, (1889) 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. 150; 37 W. R. 548; 53 J. P. 805; 5 T. L. R. 472. But no appeal lies without leave. *Unwin* v. *McMullen*, [1891] 1 Q. B. 694; 60 L. J. Q. B. 400; 39 W. R. 712; 55 J. P. 582; 7 T. L. R. 450; *Shaw* v. *Reckitt*, [1893] 2 Q. B. 59; 62 L. J. Q. B. 375; 69 L. T. 327; 41 W. R. 497; 57 J. P. 805; 9 T. L. R. 467.

(*g*) As to the power to reserve questions of law, see s. 46 of the Judicature Act, 1873 (36 & 37 Vict. c. 66).

(*h*) As to the list of objections to the election which the respondent must give in this case, see rule 8, *post*, p. 367.

Recriminatory charges can only be made where the seat is claimed by the petition. See note (*d*) to s. 87.

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(i) As to the procedure in such a case, see s. 97.

County Councils.—In the case of an election petition relating to a county council election, the certificate or decision is to be certified under sub-s. (13) of this section to the clerk of the county council. Local Government Act, 1888, s. 75 (5).

Witnesses.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury (*a*).

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court (*b*).

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

[(5.) *A witness on an election petition shall not be excused from answering any question relating to a corrupt practice or offence against this Part committed at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him; but if he answers it he shall be entitled to receive from the court a certificate stating that he was on his examination required by the court to answer questions the answers whereto criminated or tended to criminate him, and that he answered all such questions* (*c*).

(6.) *If any information, indictment, or action is at any time thereafter pending against the witness in any court for any corrupt practice or offence against this Part committed at or in relation to the election before the time of his giving his evidence, that court shall, on production and proof of the certificate, stay the proceedings, and may, in its discretion, award to him such costs as he has been put to therein.*

(7.) *The giving of or refusal to give any such certificate by the election court shall be final and conclusive.*

(8.) *A statement made by any person in answer to a question put to him by or before an election court shall not, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal.*]

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition (*d*).

(*a*) A form of order to compel the attendance of a witness will be found in rule 54, *post*, p. 373.

(*b*) For the form of warrant of committal for contempt of Court, see rules 55 and 56, *post*, p. 374.

(*c*) Sub-ss. (5)—(8) are repealed by 47 & 48 Vict. c. 70, s. 38, and are replaced by s. 30 of that Act, *post*, p. 397, which incorporates s. 59 of 46 & 47 Vict. c. 51, *post*, p. 361.

(*d*) The prescribed officer is the registrar appointed under rule 50, *post*, p. 373. As to the certificate, see rule 53. As to the expenses of the election court, see s. 101, *post*; and as to the costs of the petition, see s. 98.

Withdrawal of petition.

95.—(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place (*a*)

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly (*b*).

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution (*c*).

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent (*d*).

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

(*a*) See rules 58—60, *post*, p. 374. Affidavits by all the parties to the petition and their solicitors are required by 47 & 48 Vict. c. 70, s. 26, *post*, p. 392. For instances in which an application for leave to withdraw has been granted, see *Pascoe* v. *Puleston*, (1886) 54 L. T. 733; 50 J. P. 134; *In re Lichfield Election Petition*, (1892) 9 T. L. R. 92; *Mallam* v. *Bean*, (1887) 51 J. P. 231. An application was refused where there was no affidavit by the election agent, and the affidavits did not show that there was any good ground for presenting the petition or for withdrawing it. *In re Halifax Election Petition*, (1893) 9 T. L. R. 563.

(*b*) See rule 61, *post*, p. 375.

(*c*) See s. 89, *ante*.

(*d*) See the cases cited in note (*a*), *supra*, and *In re Devonport Election Petition*, (1886) 2 T. L. R. 345; *Finsbury*, (1892) 4 O'M. & H. 171.

Abatement of petition.

96.—(1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after

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the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

As to the notice of abatement of a petition and application to be substituted as a petitioner, see rule 63, *post*, p. 375; and as to security for costs, see s. 89.

Withdrawal and substitution of respondents.

97.—(1.) If before the trial of an election petition a respondent other than a returning officer—

(a) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b) Gives the prescribed notice that he does not intend to oppose the petition;

the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

See rules 64—67, *post*, p. 376. As to the procedure to be followed in any of the events mentioned in this section where no other person is admitted as a respondent, see rules 46 and 47, *post*, p. 372. A petition does not abate merely because the respondent has ceased to hold his office. See s. 93 (11).

Where a respondent who had given notice of his intention not to oppose applied to have his name struck out of the petition, the application was refused. *Yates* v. *Leach*, (1874) L. R. 9 C. P. 605: 43 L. J. C. P. 377; 30 L. T. 790; 38 J. P. 552.

Costs on election petitions.

98.—(1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful (*a*).

(2.) The costs may be taxed in the prescribed manner, [*but according to the same principles as costs between solicitor and client in an action in the High Court,*] and may be recovered as the costs of such an action, or as otherwise prescribed (*b*).

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the

demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereon certify the recognisance to be forfeited, and it shall be dealt with as a forfeited recognisance relating to a parliamentary election petition (*c*).

(*a*) The High Court has no jurisdiction to review the decision of the election court as to costs. Where an unsuccessful candidate was improperly made a respondent, the petitioner was held to be estopped from objecting that there was no jurisdiction to award him costs. *Lovering* v. *Dawson*, (1875) L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. 823; 39 J. P. 631.

For an instance in which a successful petitioner was deprived of costs, see *Birkbeck* v. *Bullard*, (1886) 54 L. T. 625. See also *Yellow* v. *Meredith*, (1903) 67 J. P. 111; 47 Sol. J. 387. Where a petition was wholly unfounded, the petitioners were ordered to pay the costs of the Public Prosecutor. *Crossman* v. *Gent Davis*, (1886) 54 L. T. 628; *Worcester*, (1892) 4 O'M. & H. 153.

The expenses of the election court are generally payable out of the borough fund or borough rate, but they may be ordered to be paid by the petitioner if the petition is frivolous and vexatious, or by the respondent if he has been personally guilty of corrupt practices (s. 101).

(*b*) So much of sub-s. (2) as relates to the principles of taxation has been repealed by 47 & 48 Vict. c. 70, s. 38. As to the mode of taxation and recovery of costs, see now ss. 29 and 32 of that Act, *post*, pp. 396, 398, and rule 68, *post*, p. 376.

(*c*) The prescribed officer is the Master nominated under rule 1, *post*, p. 365. A forfeited recognisance relating to a parliamentary election petition is directed by 31 & 32 Vict. c. 125, s. 42, to be dealt with in the manner provided by 3 Geo. 4, c. 46, s. 2 of which provides for the levying of the amount of the recognisance by distress.

Reception of and attendance on the election court.

99.—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.

(2.) All chief and head constables, superintendents of police, headboroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

An order of the council is required by s. 140 (2), *post*, p. 105, for the payment of expenses incurred under this section out of the borough fund or borough rate.

As to the officers of an election court, see rules 50 and 51, *post*, p. 373; and as to the shorthand writer, see rule 52.

County Councils.—In the case of an election petition relating to a county council election, accommodation for holding the election court is to be provided by the clerk of the county council. Local Government Act, 1888, s. 75 (5).

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Rules of procedure and jurisdiction.

100.—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (*a*).

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition (*b*).

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction (*c*).

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court (*d*).

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

(*a*) As to the authority by whom the rules are to be made, see now 47 & 48 Vict. c. 70, s. 30, *post*, p. 397. The rules now in force are set out *post*, p. 365.

(*b*) See also 47 & 48 Vict. c. 70, s. 30, *post*, p. 397.

(*c*) As to the jurisdiction of the Court to strike out the name of a person who has been improperly made a respondent to an election petition, see *Yates* v. *Leach*, *ante*, p. 82.

This section does not give the High Court any appellate jurisdiction over the commissioner. *Preece* v. *Harding*, (1889) 24 Q. B. D. 110; 59 L. J. Q. B. 82; 61 L. T. 837; 38 W. R. 350; 6 T. L. R. 65. See also *Ex parte Ayres*, (1886) 54 L. T. 296; *Marsland* v. *Hickman*, (1886) 2 T. L. R. 398, and the note to s. 92, *ante*. For instances in which the powers of the High Court are limited by the provisions of this Act, see *Maude* v. *Lowley*, *Clark* v. *Wallond* (*or Lowley*), and *Lovering* v. *Dawson*, *ante*, p. 75.

(*d*) The prescribed officer is the Master nominated under rule 1, *post*, p. 365.

Expenses of election court.

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate.

(2.) But the election court may in its discretion order that such

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remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely) :

(a) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner ;

(b) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs ; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

As to the expenses incurred by the town clerk, see s. 99, *ante ;* and as to an order for payment of costs by the parties, see s. 98.

Upon the trial of an election petition the respondent was found guilty of bribery, and the commissioner verbally ordered him to pay the whole of the costs, but no written order was made with respect to the remuneration and allowances to be paid to the commissioner and officers, which were paid by the Treasury. On an application by the Treasury for a *mandamus* directing repayment of this amount out of the borough fund or borough rate, it was held that no valid order for the payment of such remuneration and allowances had been made, and that the order made by the commissioner could not then be amended by the High Court, and that the Treasury were entitled to a *mandamus*. *Reg.* v. *Mayor of Maidenhead*, (1882) 9 Q. B. D. 494 ; 51 L. J. Q B. 444 ; 47 L. T. 529 ; 46 J. P. 724.

Acts done pending a petition not invalidated.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

See also s. 42, *ante*. The certificate here referred to is that which is required to be made by s. 93 (13), *ante*.

Provisions as to elections in the room of persons unseated on petition.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy ; and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

As to the filling of casual vacancies, see ss. 40 and 66, *ante* ; and as to the appointment of a substitute for the mayor or alderman in case of illness, see s. 67.

County Councils.—In a county council election the mayor or alderman only acts as returning officer if the election is held for a borough division. See the note to s. 53, *ante*.

Prohibition of disclosure of vote.

104. Any person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

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PART V.

CORPORATE PROPERTY AND LIABILITIES.

[Only s. 124 in this Part is applicable to county councils. Local Government Act, 1888, s. 75.]

Corporate Land.

Power to purchase land for town hall, &c.

105. A municipal corporation may contract for the purchase of and hold any land not exceeding in the whole five acres, either in or out of the borough, and thereon, or on any land belonging to or held in trust for the Corporation, may build a town hall, council house, justices' room, with or without a police station and cells, or lock-ups, or a quarter and petty sessions-house, or an assize court-house, with or without judges' lodgings, or a polling station, or any other building necessary or proper for any purpose of the borough.

Except for the purposes mentioned in this section and in s. 6 of the Mortmain and Charitable Uses Act, 1888 (see note (*a*) to s. 107), a town council cannot purchase land without obtaining the approval of the Local Government Board under s. 107, unless they are empowered to do so in any particular case by charter or by Act of Parliament.

It may be mentioned here that prisons belonging to municipal boroughs, and the powers formerly exerciseable by the council of a borough as a prison authority, were transferred to a Secretary of State by the Prison Act, 1877 (40 & 41 Vict. c. 21, s. 5), although debts then existing in respect of such prisons were left payable by the council of the borough by s. 22 of that Act.

A contract made under this section must be under seal. The rule of law is that *primâ facie* and for general purposes a corporation can only contract under seal, because the proper legal mode of authenticating the act of a corporation is by means of its seal. Thus it has been held that the appointment of an attorney to act for a corporation, and that of a town clerk, must be under seal. *Arnold* v. *Mayor of Poole*, (1842) 4 M. & G. 860; 12 L. J. C. P. 97; 5 Scott N. R. 741; *Reg.* v. *Mayor of Stamford*, (1844) 6 Q. B. 433. A contract for the letting of market tolls by a corporation was held to be unenforceable because it was not under seal. *Mayor of Kidderminster* v. *Hardwick*, (1873) L. R. 9 Ex. 13; 43 L. J. Ex. 9; 29 L. T. (N. S.) 611; 22 W. R. 160. So where the lessee of buildings belonging to a municipal corporation offered to surrender his lease and to accept a new lease on certain terms, and this offer was accepted by the council, but not under seal, it was held that the contract could not be enforced by the corporation. *Mayor of Oxford* v. *Crow*, [1893] 3 Ch. 535; 69 L. T. 228; 42 W. R. 200.

Exceptions, however, to this rule have been established in cases where the rule would occasion very great inconvenience, or would tend to defeat the very object for which the corporation was created, such as the doing of acts very frequently recurring or too insignificant to be worth the trouble of affixing the common seal. *Mayor of Ludlow* v. *Charlton*, (1840) 6 M. & W. 815; 9 C. & P. 242; 10 L. J. Ex. 75; 4 Jur. 657; 55 R. R. 794; *Austin* v. *Bethnal Green Guardians*, (1874) L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. (N. S.) 807; 22 W. R. 406; 38 J. P. 248.

A third exception to the rule exists in cases where the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry such purposes into effect, and the work is done or the goods are supplied to the order of the corporation and accepted by them. In such cases, the whole consideration for payment being executed, an implied contract by the corporation to pay for the work or the goods arises from the acceptance by them of the benefit of acts done at their request, and they cannot refuse to pay on the ground that there was no contract under seal. *Lawford* v. *Billericay Rural Council*, [1903] 1 K. B. 772; 72 L. J. K. B. 554; 88 L. T. 317; 51 W. R. 630; 67 J. P. 245; 1 L. G. R. 535; 19 T. L. R. 322. Thus a contractor has been held to be entitled to recover payment for water-closets provided and for coals supplied to a workhouse, although his contract with

the guardians was not under seal. *Clarke* v. *Cuckfield Union*, (1852) 21 L. J. Q. B. 349; 16 Jur. 686; 16 J. P. 457; *Nicholson* v. *Bradfield Union*, (1866) L. R. 1 Q. B. 620; 35 L. J. Q. B. 176; 14 L. T. (N. S.) 830; 14 W. R. 731; 30 J. P. 549. The earlier decisions on this question are conflicting, and the cases in which the rule as to the necessity for a contract under seal has been applied without regard to the acceptance by the corporation of the benefit of the contract must be taken to be overruled by the decision of the Court of Appeal in *Lawford* v. *Billericay Rural Council*, *supra*. As to the application of this decision to contracts other than contracts for work to be done or goods to be supplied, see *Bourne & Hollingsworth* v. *Marylebone Corporation*, (1908) 72 J. P. 129; 6 L. G. R. 406; 24 T. L. R. 322. The judgment in that case, however, was reversed on appeal (72 J. P. 306; 6 L. G. R. 1141; 24 T. L. R. 613) on the ground that there was no evidence of any contract by the corporation.

In the case of a contract for the admission of a ship into the defendants' dock for repairs, it was held that the seal could be dispensed with on the ground of inconvenience. *Wells* v. *Mayor of Kingston-upon-Hull*, (1875) L. R. 10 C. P. 402; 44 L. J. C. P. 257; 32 L. T. (N. S.) 615; 23 W. R. 562. Where a contract under seal for the construction of sewerage works gave power to the engineer to vary or alter the works required, it was held that such variations need not be made under seal. *Williams* v. *Barmouth Urban District Council*, (1897) 77 L. T. 383. An agreement for the compromise of an action need not be under seal. *Ibid.* An order for the payment of money out of the borough fund under a contract which was not enforceable against the corporation because it was not under seal has been held not to be a misapplication of the borough fund. *Reg.* v. *Mayor of Norwich*, (1882) 30 W. R. 752; 46 J. P. 308.

The principle stated in *Lawford* v. *Billericay Rural Council*, *supra*, does not apply to a contract made by a town council when acting as an urban authority under the Public Health Acts, if the value or amount of the contract exceeds £50, because any such contract is required by s. 174 of the Public Health Act, 1875, to be made in writing and sealed with the common seal of the corporation. This provision has been held to be imperative, so that a contract to which that section applies cannot be enforced against a town council if it was not made under seal, even though the consideration has been executed and the council have received the benefit of it. *Hunt* v. *Wimbledon Local Board*, (1878) 4 C. P. D. 48; 48 L. J. C. P. 207; 40 L. T. 115; 27 W. R. 123; 43 J. P. 284; *Young* v. *Mayor of Leamington*, (1883) 8 A. C. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 31 W. R. 925; 47 J. P. 660.

Where a firm of solicitors had been retained by an urban district council to oppose a bill in Parliament, it was held that though the original retainer was not under seal, the subsequent confirmation of such retainer under seal was sufficient to bind the council both under s. 174 of the Public Health Act, 1875, and at common law, although there was no fresh consideration. *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601; 71 L. J. K. B. 109; 85 L. T. 785; 66 J. P. 293; 18 T. L. R. 139

Power to borrow with approval of *Treasury*.

106. The council may, with the approval of the *Treasury*, borrow at interest on the security of any corporate land, or of any land proposed to be purchased by the council under this Act, or of the borough fund or borough rate, or of all or any of those securities, such sums as the council from time to time think requisite for the purchase of land, or for the building of any building which the council are by this Act authorized to build.

As to the power of the council to purchase land, see ss. 105 and 107.

The approval of the Local Government Board is now required throughout this Part of the Act, instead of that of the Treasury, by s. 72 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, p. 444. As to the mode in which application for such approval is to be made, see s. 236, *post*; and as regards the repayment of loans made under this section, see ss. 112 and 113. The loans authorized by this section may be borrowed in the manner provided by the Local Loans Act, 1875 (38 & 39 Vict. c. 83), and the Local Loans Sinking Funds Act, 1885 (48 & 49 Vict.

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c. 30), *post*, pp. 286, 408, or from the Loan Commissioners under the Public Works Loans Act, 1875. See the note to s. 9 of that Act, *post*, p. 303.

In addition to the powers conferred by this section, a town council are authorized to borrow money for the purpose of providing sites for working men's dwellings under s. 111 (5), *post*, and of maintaining borough bridges under s. 119 (4). Further powers of borrowing may be exercised by a town council for the purposes of various Acts of Parliament which it is their duty to administer. As to such powers, reference must be made to the provisions of the statute in each case. See, for instance, the Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 20; the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 233—244; the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 8; the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), ss. 25, 43, 66; the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), s. 19, *post*, p. 525; the Education Act, 1902 (2 Edw. 7, c. 42), s. 19, *post*, p. 609.

The borrowing powers of the council can only be exercised subject to the conditions and restrictions imposed by statute. Unauthorized borrowing by means of an overdraft at their bankers will be restrained by injunction. *Attorney-General* v. *De Winton*, [1906] 2 Ch. 106; 75 L. J. Ch 612; 54 W. R. 499; 70 J. P. 368; 4 L. G. R. 549; 22 T. L. R. 446.

Power to acquire land with the approval of the *Treasury*.

107.—(1.) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the *Treasury*, purchase or acquire any land in such manner and on such terms and conditions as the *Treasury* approve, and the same may be conveyed to and held by the corporation accordingly (*a*).

8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18.

(2.) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchases of land under this section (*b*).

(*a*) The approval of the Local Government Board is now required instead of that of the Treasury. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444.

This section relates only to the acquisition of land in fee or for such long terms as the Statutes of Mortmain apply to, and does not by implication prohibit a corporation from taking land on a short lease without obtaining the approval of the Local Government Board. *Truro Corporation* v. *Rowe*, [1901] 2 K. B. 870; 70 L. J. K. B. 1026; 85 L. T. 422; 50 W. R. 151; 65 J. P. 806; 17 T. L. R. 773. The decision in that case was subsequently varied by the Court of Appeal (see [1902] 2 K. B. 709; 71 L. J. K. B. 974; 87 L. T. 386; 51 W. R. 68; 66 J. P. 821; 18 T. L. R. 820); but the judgment of that Court did not deal with the question raised as to the construction of this section.

Land cannot be acquired by a corporation in mortmain except under the authority of a licence from the Crown or of a statute. Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1, *post*, p. 462. Section 6 of that Act, *post*, p. 465, exempts an assurance by deed of land of any quantity, and an assurance by will of land not exceeding twenty acres for a public park, or two acres for a public museum, or one acre for a schoolhouse for an elementary school. The deed or will (except a deed made in good faith for full and valuable consideration) must be executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator or the execution of the deed. This section, with the exception of the requirement that an assurance by deed made otherwise than in good faith for full and valuable consideration must be executed not less than twelve months before the death of the assuror, is made applicable by an amending Act of 1892 (55 & 56 Vict. c. 11), *post*, p. 515, to any assurance by deed of land to a municipal corporation for any purpose or purposes for which they are empowered by any Act of Parliament to acquire land. See the notes to those Acts, *post*.

A similar exemption with respect to an assurance of land for the purpose of providing dwellings for the working classes is enacted by 53 & 54 Vict. c. 16, *post*, p. 485.

See also s. 10 of the Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29), *post*, p. 520, as to conveyances and assurances by will made under or for the purposes of that Act.

(*b*) The provisions of the Lands Clauses Acts which are here referred to are as follows: 8 & 9 Vict. c. 18, ss. 6—15; 23 & 24 Vict. c. 106, ss. 1—5; 32 & 33 Vict. c. 18, s. 1.

Restrictions on alienation of corporate land without approval of *Treasury*.

108.—(1.) The council shall not, unless authorized by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the *Treasury*.

(2.) The council shall not, unless authorized by Act of Parliament, lease or agree to lease any corporate land without the approval of the *Treasury*, except as follows:

(a) They may make a lease or agreement for a lease for a term not exceeding thirty-one years from the date of the lease or agreement, so that there be reserved and made payable during the whole of the term such clear yearly rent as to the council appears reasonable, without any fine.

(b) They may make a lease or agreement for a lease for a term not exceeding seventy-five years from the date of the lease or agreement, and either at a reserved rent or on a fine, or both, as the council think fit,—

(i.) Of tenements or hereditaments, the greater part of the yearly value of which, at the date of the lease or agreement, consists of any building or buildings; or

(ii.) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith; or

(iii.) Where the lessee or intended lessee agrees to erect a building or buildings thereon of greater yearly value than the land, —of land proper for gardens, yards, curtilages or other appurtenances to be used with any other house or other building erected or to be erected on any such land, belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

The approval of the Local Government Board is now required instead of that of the Treasury. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444.

As to the sale or letting of corporate land with such approval, see s. 109; and as to the mode in which the approval may be given, see *Arnold* v. *Gravesend Corporation*, (1856) 2 K. & J. 574; 25 L. J. Ch. 776; 2 Jur. (N. S.) 703; 27 L. T. (O. S.) 97; 4 W. R. 478.

As to the sale of corporate land which is taken compulsorily, see s. 15 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

As to the effect of a lease made without the approval of the Local Government Board, see *Canterbury Corporation* v. *Cooper*, (1909) 100 L. T. 597; 73 J. P. 225; 7 L. G. R. 908.

Power to dispose of land with approval of *Treasury*.

109. The council may, with the approval of the *Treasury*, dispose of any corporate land either by way of absolute sale, or by way of exchange, mortgage, charge, demise, lease, or otherwise, in such manner and on such terms and conditions as the *Treasury* approve.

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The approval of the Local Government Board is now required instead of that of the Treasury. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444. Notice must be given of the intention to apply for such approval in the manner required by s. 236, *post*. A sale of corporate land may be made in consideration of a perpetual yearly chief rent. *Scarborough Corporation* v. *Cooper*, [1910] 1 Ch. 68; 79 L. J. Ch. 38; 101 L. T. 552; 74 J. P. 44; 8 L. G. R. 54; 26 T. L. R. 88. As to the sale or letting of corporate land to provide sites for working men's dwellings, see s. 111, *post*; for a public recreation ground, 22 & 23 Vict. c. 27, s. 3; for a site for a place of worship, 45 & 46 Vict. c. 21; or for a sailors' home in the case of a borough which is a port, 57 & 58 Vict. c. 60, s. 259. As to the appropriation of corporate land for providing baths and washhouses, see 9 & 10 Vict. c. 74, s. 24; and as to the power of a town council to transfer to the Secretary for War or to sell buildings or land held for militia purposes, see 35 & 36 Vict. c. 68, s. 10; 36 & 37 Vict. c. 68, s. 8; 36 & 37 Vict. c. 84, s. 2. As to the power to appropriate land for the purposes of the Education Acts, and to appropriate for other purposes land acquired for educational purposes, see 7 Edw. 7, c. 43, s. 1, and 9 Edw. 7, c. 29, s. 5, *post*.

Council may renew leases, &c.

110. In the following cases,—

(a) Where a body corporate of a borough was on the fifth of June one thousand eight hundred and thirty-five bound or engaged by any covenant or agreement, expressed or implied, or was enjoined by any deed, will, or other document, or was sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions:

(b) Where a body corporate of a borough theretofore ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, on the payment of an arbitrary fine,—

Then, notwithstanding anything in this Act, the council of the borough may renew the lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and on the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as the council could or might have done if this Act had not been passed.

Under similar provisions in s. 95 of the Act of 1835, it was held that the section is to be construed liberally, and that though the new lease need not be in precisely the same terms as the former one, it must be in substance the same. *Attorney-General* v. *Corporation of Great Yarmouth*, (1855) 21 Beav. 625; 25 L. T. (O. S.) 5; 3 W. R. 309.

Working Men's Dwellings.

Sites for working men's dwellings.

111.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the *Treasury* for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the *Treasury* approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorized by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

The approval of the Local Government Board is now required instead of that of the Treasury. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444. As to the borough fund and the borough rate, see ss. 139—149, *post*; and as to the power of borrowing, see s. 106, *ante*. Forms of grants and leases under this section are contained in Schedule 8, Part III., *post*, p. 187.

Houses for the working classes may also be provided by the council under Part III. of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), and Part I. of the Housing, Town Planning, etc., Act, 1909 (9 Edw. 7, c. 44).

Repayment of Loans.

Power for *Treasury* to impose conditions as to repayment of money borrowed.

112.—(1.) Where the *Treasury* approve a mortgage or charge under this Part they may, as a condition of their approval, require that the money borrowed on the security of the mortgage or charge be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund, or both.

(2.) In that case the sums required for providing for the repayment of the principal and interest of the money borrowed shall be by virtue of this Act a charge on all or any of the following securities, namely, the land comprised in the mortgage (without prejudice to the security thereby created), or any other corporate land, or the borough fund, or the borough or other rates legally applicable to payment of the money borrowed or of the expenses which the money is borrowed to defray, as the *Treasury* direct.

The powers of the Treasury under this section have been transferred to the Local Government Board by 51 & 52 Vict. c. 41, s. 72, *post*, p. 444. As to a sinking fund, see s. 113.

Provisions as to sinking fund.

113.—(1.) Where money borrowed under this Part is directed to be repaid by means of a sinking fund, the council shall, out of the rents and profits of the land on which, or out of the borough fund or

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rates on which, the sums required for the sinking fund are charged under this Act, invest such sums, at such times, and in such Government annuities, as the *Treasury* direct, and shall also from time to time invest in like manner all dividends of those annuities.

(2.) The annuities shall, in the books of the Bank of England, be placed to the account of the corporation, and in the matter of this Act or of any previous Act under which the investment is made.

(3.) The dividends of the annuities shall be received and invested by such persons as the council by power of attorney under the corporate seal from time to time appoint.

(4.) No transfer shall be made of the annuities, or of any part thereof, without the consent in writing of the *Treasury* addressed to the chief accountant of the Bank of England.

(5.) The direction in writing of the council by power of attorney under the corporate seal, with the consent in writing of the *Treasury*, shall be sufficient authority to the Bank for permitting any such transfer.

The powers of the Treasury under this section have been transferred to the Local Government Board by 51 & 52 Vict. c. 41, s. 72, *post*, p. 444.

As to the discharge by means of a sinking fund of a loan made under the Local Loans Act, 1875 (38 & 39 Vict. c. 83), see the note to s. 13 of that Act, *post*, p. 291.

The sums required for the sinking fund may now be invested in any of the investments in which trustees are authorized to invest. See s. 7 of the Trust Investment Act, 1889 (52 & 53 Vict. c. 32), and s. 1 of the Trustee Act, 1893 (56 & 57 Vict. c. 53).

Purchase or Compensation Money.

Provision for replacing purchase or compensation money paid to treasurer.

114.—(1.) Where purchase money or compensation has been paid to the Bank of England under an Act of Parliament in respect of land or any interest therein purchased or taken from a municipal corporation, or in respect of permanent damage to land of a municipal corporation, and the *Treasury* approve of the payment of the money or compensation, or of any money to arise from the sale of any Government securities in which the same has been invested, to the corporation or the treasurer, the *Treasury* may, as a condition of their approval, require provision to be made for raising and for investing in Government annuities a sum equivalent to the amount of money so paid.

(2.) The foregoing provisions of this Part applicable in the case of a sinking fund, as regards the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this section.

(3.) The *Treasury* shall, when it appears to them that an amount of annuities equivalent to the amount so paid has been raised by investment, direct that the accumulation shall cease; and the annuities and the dividends thereof shall thenceforth be applicable as if the annuities had arisen from the investment under the Act of Parliament under which the purchase money or compensation became payable.

(4.) But this section shall not apply to money payable to a municipal corporation when provision for the application of the money, or of the price or compensation from which the money is derived, is contained in any local Act of Parliament relating thereto, and the money is to be paid to the corporation to be applied in conformity with that provision.

The powers of the Treasury under this section have been transferred to the Local Government Board. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444.

For the provisions relating to a sinking fund, see s. 113. See also s. 116 as to the application of annuities arising from investments under this section.

Money paid into court under s. 69 of the Lands Clauses Consolidation Act, 1845, in respect of the purchase of lands belonging to a municipal corporation, was ordered to be applied in paying off certain mortgages which had been given by the corporation and which were payable out of the borough fund. *Re Derby Municipal Estates*, (1876) 3 Ch. D. 289; 24 W. R. 729.

Investment of proceeds of sale or exchange authorized by *Treasury*.

115.—(1.) Where the *Treasury* approve of the sale or exchange of any corporate land or of any interest therein, their approval may be subject to such conditions as they think fit in relation to the investment for the benefit of the corporation of the money arising from the sale or exchange.

(2.) If the *Treasury* direct the money to be invested in Government annuities, the foregoing provisions of this Part respecting the mode of investing, payment of dividends, and transfer of annuities shall be applicable, but not so as to make any accumulation necessary.

(3.) If the *Treasury* consent to the application of the money or of any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent, require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer.

The powers of the Treasury under this section have been transferred to the Local Government Board. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444. As to the approval of the sale or exchange of corporate land, see s. 109. The foregoing provisions referred to in sub-s. (2) are those contained in s. 113. As to the application of the money for the benefit of the inhabitants of the borough, see s. 116; and as to the provision which may be required in case of the approval of payment to a municipal corporation or the treasurer, see s. 114.

Power for *Treasury* to authorize application of certain investments for benefit of borough.

116. The *Treasury* may at any time approve of the application of any annuities arising from investments under either of the two last preceding sections, or of the money to arise from the sale thereof, or any part thereof respectively, for the benefit of the inhabitants of the borough; and, as a condition of their approval, may require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, and so from time to time, and the provisions of this Part shall be applicable accordingly; but it shall not be imperative on the *Treasury* to impose the condition aforesaid where by reason of the application of the annuities or money to improvement of the property of the corporation or for the permanent benefit of the borough, or otherwise, under the special circumstances of the case, the *Treasury* in their discretion think fit to dispense with the condition.

The powers of the Treasury under this section have been transferred to the Local Government Board by 51 & 52 Vict. c. 41, s. 72, *post*, p. 444. The provision which may be required by the Board is that which they are authorized to require by s. 114 (1).

Misappropriation.

Penalty for misappropriation of moneys.

117. If any person authorized to receive money to arise from the sale of any annuities or securities purchased or transferred under the foregoing provisions of this Part, or under any Act repealed by this

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Act, or any dividends thereon, or any other such money as aforesaid, appropriates the same otherwise than as directed by this Act, or by the *Treasury* in pursuance thereof, he shall be guilty of a misdemeanour, and shall be subject in respect thereof to the provisions of the Larceny Act, 1861, applicable to a person guilty of a misdemeanour under section seventy-five of that Act, or to the provisions of any enactment for the time being substituted for that section.

24 & 25 Vict. c. 96, s. 75.

The power to give directions as to the application of the money has been transferred to the Local Government Board. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444.

Section 75 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), has been repealed by the Larceny Act, 1901 (1 Edw. 7, c. 10), and is now replaced by s. 1 of that Act. A person convicted under that section is liable to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

Corporate Stock.

Transfer of and other dealings with corporate stock.

118.—(1.) Any stocks, funds, or public securities (in this section referred to as stock) standing in the books of the Bank of England or of any other public company or society in the name of a municipal corporation, under any style or title of incorporation, and the dividends and interest thereof and all bonuses and accretions thereto, belonging to the municipal corporation, without being subject to any trust for charitable purposes, may be transferred by and paid to such persons as the council appoint by an instrument under the corporate seal, signed and sealed also by the clerk to the trustees of the municipal charities, who shall on request sign and seal it.

(2.) Any stock and money so standing belonging to the trustees of the municipal charities solely on charitable trusts may be transferred by and paid to persons appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk, and being also sealed with the corporate seal, which seal the mayor shall on request cause to be affixed thereto.

(3.) The dividends and interest of any stock and money so standing, belonging partly to the municipal corporation but subject to charitable trusts, may be paid to persons authorized to have the same paid to them by an instrument in writing under the corporate seal, and appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk.

(4.) In every case the receipt of the persons authorized to give a receipt to the company or society by an instrument under the corporate seal, and signed and sealed by the clerk to the trustees of the municipal charities, shall be an effectual discharge to the company or society.

(5.) So much of the money so paid as is held on charitable trusts shall be paid over to the trustees of the municipal charities, and so much as the municipal corporation is entitled to beneficially shall go to the borough fund.

(6.) But the company or society shall not be bound to see to the application of that money, or to the validity of the appointment of the clerk to the trustees of the municipal charities, or to the execution

of any instrument by any of them, or to inquire whether or not the stock or money is charged with or held on any charitable trust.

(7.) Every person authorized to so receive any money shall account to the council and to the trustees of the municipal charities for all money received by him, and on his failure so to account a court of summary jurisdiction may, on complaint either of the council or of the trustees, by summary order require him to do so.

The expression "court of summary jurisdiction" means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is authorized to act under the Summary Jurisdiction Acts. 52 & 53 Vict. c. 63, s. 13, *post*, p. 478.

The council are empowered by the Forged Transfers Acts, 1891 and 1892 (54 & 55 Vict. c. 43; 55 & 56 Vict. c. 36), to make compensation out of their funds for any loss arising from a transfer of shares, stock, or securities issued by them in pursuance of a forged transfer, and to provide a fund to meet claims for such compensation.

Borough Bridges.

Maintenance of borough bridges.

119.—(1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council (*a*).

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge, but the notices required in the case of a county bridge shall not be required in the case of a borough bridge (*b*).

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4.) The council, with the consent of the *Treasury*, may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed (*c*).

(*a*) At common law and under the Statute of Bridges (22 Henry 8, c. 5) the inhabitants of a county are as a rule liable to repair every bridge which is of public utility if they have acquiesced in the dedication of it to the public, and a borough which is a county of itself is liable to repair such bridges within its boundary. *Reg.* v. *Southampton*, (1886) 17 Q. B. D. 424; 55 L. J. M. C. 158; 55 L. T. 322; 35 W. R. 10; 50 J. P. 773; 2 T. L. R. 815. Where the area of such a borough is extended so as to include a bridge which was formerly repairable by the county, the liability to repair the bridge is transferred to the borough. *Reg.* v. *Justices of St. Peter's, York*, (1707) 2 Ld. Raym. 1249; *R.* v. *Norwich*, (1719) 1 Str. 177. See also 51 & 52 Vict. c. 41, s. 34 (2), *post*, p. 424, as to the liability of county boroughs to repair bridges which were formerly repairable by the county or hundred. In the case of a bridge built since 1803 the inhabitants of the county are not liable to repair unless the bridge was erected to the satisfaction of the county surveyor. 43 Geo. 3, c. 59, s. 5. Bridges situate in a borough which is not a county of itself are in general repairable by the county, but the borough may be liable to repair by immemorial usage or *ratione tenuræ*. *Reg.* v. *New Sarum*, (1845) 7 Q. B. 941; 15 L. J. M. C. 15; *Reg.* v. *Dorset*, (1881) 45 L. T. 308. Private individuals may in certain cases be liable to repair such bridges *ratione tenuræ* or otherwise.

As to the exemption of a borough which is liable to maintain its own bridges from

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liability to contribute to the cost of maintaining county bridges, see *Mayor of Bury St. Edmunds* v. *West Suffolk County Council*, [1898] 2 Q. B. 246; 67 L. J. Q. B. 750; 78 L. T. 624; 62 J. P. 486; 14 T. L. R. 436, cited in the note to s. 35 (2) of the Local Government Act, 1888, *post*, p. 426.

(*b*) The powers of the justices with respect to county bridges have been transferred to the county council by s. 3 (viii) of the Local Government Act, 1888 (51 & 52 Vict. c. 41). For the statutes relating to county bridges, see Pratt's Law of Highways, Part II., Chap. VII., and Chitty's Statutes, title Highways (Bridges).

(*c*) The consent of the Local Government Board has been substituted for that of the Treasury by s. 72 of the Local Government Act, 1888, *post*, p. 444. As to the repayment of loans, see s. 112, *ante*. Forms of mortgage and transfer are set out in Schedule 8, *post*, p. 189.

Loans for Municipal Buildings.

Power to borrow for buildings.

120. The council of a borough may borrow money from the Public Works Loan Commissioners for the purpose of building, enlarging, repairing, improving, and fitting up any building which they are by this Act authorized to build, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of the loan, and may mortgage the rate or borough rate to the Commissioners in accordance with the Public Works Loans Act, 1875, or any amendment thereof, in such manner and form as the Commissioners direct.

38 & 39 Vict. c. 89, s. 40.

See the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), *post*, p. 300.

Advowsons and similar Rights.

Obligations and powers in respect of advowsons, &c.

121.—(1.) Notwithstanding any sale by a municipal corporation of any advowson, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, whether the sale is made before or after the commencement of this Act, the corporation and its property shall continue liable to the same obligation (if any) of providing for and maintaining or contributing to the maintenance of any priest, curate, preacher, or minister, as if the sale had not been made; and that liability may be enforced by the same means, at the instance of the Crown or otherwise, as if this Act had not been passed, and the advowson or right had remained vested in the corporation.

(2.) Where a municipal corporation holds land subject to an obligation to provide a priest, curate, preacher, or minister, nothing in this Act shall preclude the corporation from augmenting or endowing his office, either by assigning to him and his successors in office a competent portion of the land, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, except that no such augmentation or endowment shall be valid without the approval of the *Treasury*.

(3.) Where a municipal corporation sells a right of nomination to an ecclesiastical preferment, not being a benefice or perpetual curacy, that preferment shall, from and after the sale, be a benefice presentative, and the holder thereof and his successors shall be a body corporate, having perpetual succession and capable of taking and holding in perpetuity all property granted to or purchased for them by the Governors of the Bounty of Queen Anne, or by other persons contributing with those governors as benefactors.

The approval of the Local Government Board is now required under sub-s. (2) of this section instead of that of the Treasury. 51 & 52 Vict. c. 41, s. 72, *post*, p. 444.

Regulations as to sale of ecclesiastical patronage belonging to municipal corporation.

122.—(1.) Where at the passing of the Municipal Corporations Act, 1835, a body corporate, or any particular class, number, or description of members thereof, or the governing body thereof, were in their corporate capacity, and not as trustees of a charity, seised or possessed of any manor or land whereto any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment was appendant or appurtenant, or of any advowson in gross, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, the advowson or right, if not sold before the commencement of this Act, shall be sold at such time and in such manner as the Ecclesiastical Commissioners for England direct, so that the best price be obtained for the same.

(2.) Upon any such sale the council shall, with the consent in writing of those Commissioners, signed by any three or more of them, convey, under the corporate seal, the advowson or right to the purchaser, or as he directs, and the advowson or right shall vest accordingly.

(3.) The proceeds of sale shall be paid to the treasurer and invested in Government securities, and the income thereof shall go to the borough fund; or those proceeds, or any part thereof, may be applied towards the liquidation of any debt contracted by the body corporate before the passing of the Municipal Corporations Act, 1835.

(4.) Any vacancy arising before the sale shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which the benefice or preferment is situate (*a*).

(*a*) See *Hine* v. *Reynolds*, (1840) 2 M. & Gr. 71; 2 Scott N. R. 394.

Special Rates.

Power to continue rates for special purposes.

123. Where before the passing of the Municipal Corporations Act, 1835, a rate might be levied in a borough for the purpose of watching conjointly with any other purpose, nothing in this Act shall prevent the levying and collecting of such a rate for that other purpose solely, or affect the powers given in any Act anterior to the Municipal Corporations Act, 1835, as far as they relate to that other purpose; but where the amount of that rate might not before the passing of the Municipal Corporations Act, 1835, exceed a given rate in the pound on the value of property rateable thereto, the rate to be levied for the other purpose solely shall not exceed such proportion of that given rate as appears to have been expended for that other purpose by an account of the average yearly expenditure during the last seven years before the passing of the Municipal Corporations Act, 1835, or during those of the same seven years during which the rate was levied.

As to watch rates, see ss. 197—200, *post*.

Misapplication of Corporate Property.

Prohibition of expenditure of

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other

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corporate funds on parliamentary elections.

person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognisance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognisance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, byelaw, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

County Councils.—This section is made applicable to county councils by s. 75 of the Local Government Act, 1888.

Transitory Provisions.

Part V. Section 125.

Transfer of investments made before 1860 in names of trustees.

125.—(1.) In the several cases following:

(a) Where before the fifteenth of May one thousand eight hundred and sixty the Treasury on approving of a mortgage of corporate land had required a sinking fund in names of trustees;

(b) Where before the same day the Treasury, on approving of the payment to a corporation or their treasurer of purchase money for or compensation in respect of corporate land, or of money arising from sale of Government securities in which the same had been invested, had required provision for raising by investments in names of trustees an amount equivalent to the amount so paid;

(c) Where before the same day the Treasury, on approving of a sale or alienation of corporate land, had required the investment of the proceeds in names of trustees;

The *Treasury*, if they have not so done before the commencement of this Act, may require any securities in which any such investments had been made to be transferred into the name of the corporation in the matter of this Act, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of Government annuities in the name of the corporation and in the matter of this Act.

(2.) The order in writing of the *Treasury* for that purpose shall be a sufficient discharge to the trustees from all claims in respect of the transfer of the securities in pursuance of the order.

(3.) The *Treasury* may, in the cases aforesaid, give such directions as they might give in the analogous cases in this Part provided for, arising after the commencement of this Act, or as near thereto as circumstances require, and the provisions of this Part shall apply accordingly.

(4.) Where any such transfer as aforesaid has before the commencement of this Act been made into the name of the corporation in the matter of any Act repealed by this Act, this Act shall, if the *Treasury* so direct, be substituted in the title of the account for that Act.

Scheme respecting mortgage debts incurred before 1860.

126. Where in a borough any mortgage debt had been before the fifteenth of May one thousand eight hundred and sixty incurred, for discharge of which no adequate provision then existed, the council, if they have not so done before the commencement of this Act, may submit to the *Treasury* any scheme for the discharge thereof by instalments, or a sinking fund, or both, extending over any term of years, and if the *Treasury* approve of the scheme, the sums required for discharge of the debt as proposed therein shall by virtue of this Act become charged on all or any part of the corporate land, or the borough fund, or borough rate, or any other rate applicable to discharge of the debt, or on all or any of those securities, as the *Treasury* direct, and the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund, or instalments, or both, except the limitation to a period of thirty years, shall apply for discharge of the debt.

Part V. Section 127.

Consolidation of debts incurred before 1860.

127. Where in a borough debts had from time to time, before the fifteenth of May one thousand eight hundred and sixty, been incurred under Acts of Parliament, with different periods assigned for discharge thereof, the council, if they have not so done before the commencement of this Act, may, with the consent of the *Treasury*, and with the previous consent in writing of the persons or bodies corporate to whom the debts are owing, consolidate the debts into one, and provide for discharge of the consolidated debt by annual instalments, or a sinking fund, or both, extending over a period not exceeding thirty years, and make the instalments or payments a charge on the borough fund, or borough rate, or any other rate applicable to the discharge of the debts, or on all or any of those securities, as the *Treasury* direct.

Saving for sales, &c. in pursuance of past contracts and resolutions.

128. Nothing in this Act shall affect any power to sell, mortgage, alienate, or lease corporate lands in pursuance of an agreement made on or before the fifth day of June one thousand eight hundred and thirty-five, or of a resolution entered in the books of a body corporate on or before that date.

Saving for rates in respect of past debts.

129. Nothing in this Act shall prevent the levying or collection of any rate for the purpose of paying any debt contracted before the commencement of this Act or any interest thereon.

Saving for rights of creditors in respect of tolls or dues.

130. It shall not be lawful for the council of a borough of which the body corporate had before the passing of the Municipal Corporations Act, 1835, contracted any lawful debt chargeable on any tolls or dues belonging or payable to that body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were or was applicable before the passing of that Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission thereof or exemption therefrom or of or from any part thereof, except with the consent in writing, under the hands of a majority in number and amount, of the creditors to whom the debt is due, until after the debt and all arrears of interest due thereon have been fully paid and satisfied.

Saving for lawful debts contracted before 5 & 6 Will. 4, c. 76.

131.—(1.) Notwithstanding anything in this Act, the application of the borough fund to the several payments specified in the Fifth Schedule or otherwise authorized by this Act shall be subject to the payment of any lawful debt due from the municipal corporation to any person which was contracted before the passing of the Municipal Corporations Act, 1835, and is unredeemed, or of so much thereof as the council from time to time are required or deem it expedient to redeem, and to the payment from time to time of the interest on so much thereof as remains unredeemed.

(2.) The council may from time to time execute under the corporate seal any deed or obligation in the name of the corporation for securing repayment and satisfaction of any such debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

(3.) Money borrowed by a council for the purpose of being applied,

and applied, in or towards satisfaction and discharge of any such pre-existing debt or obligation, shall be deemed to be a debt contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

The following cases illustrate the meaning of the expression "lawful debt" in this section: *Holdsworth* v. *Dartmouth Corporation*, (1840) 11 A. & E. 490; 3 P. & D. 308; *Pallister* v. *Gravesend Corporation*, (1850) 9 C. B. 774; *Arnold* v. *Gravesend Corporation*, (1856) 2 K. & J. 574; 25 L. J. Ch. 776; 2 Jur. (N. S.) 703; 27 L. T. (O. S.) 97; 4 W. R. 478; *Payne* v. *Brecon Corporation*, (1858) 3 H. & N. 572; 27 L. J. Ex. 495.

Saving against new liability to debts contracted before 5 & 6 Will. 4, c. 76.

132. Nothing in this Act shall make liable to the payment of any debt contracted by any body corporate of a borough before the passing of the Municipal Corporations Act, 1835, any part of the real or personal estate of that body corporate which before the passing of that Act was not liable thereto or authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of that Act, which before the passing of that Act could not lawfully be levied therein towards payment of the same.

See *Hallett* v. *Overseers of Brighton*, (1857) 7 E. & B. 342; 26 L. J. M. C. 61; 3 Jur. (N. S.) 237; 28 L. T. (O. S.) 248; 5 W. R. 198; *Great Western Railway* v. *Maidenhead Corporation*, (1862) 11 C. B. (N. S.) 653; 31 L. J. M. C. 113.

PART VI.

Charitable and other Trusts and Powers.

[This Part (ss. 133—138) does not apply to county councils.]

Charitable Trusts.

Administration of charitable trusts and vesting of legal estate.

133.—(1.) Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the members thereof, in his or their corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land, in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853, vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for the time being vested in the trustees or any of them, or in any persons or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation,

16 & 17 Vict. c. 137, s. 65.

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or removal, and such appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance.

(2.) Nothing in this section shall take away, abridge, or prejudicially affect any power, authority, or jurisdiction of the Charity Commissioners for England and Wales.

Property appropriated by a corporation to the maintenance of lecturers to preach before the corporation was held not to be subject to a charitable trust within the meaning of the corresponding section of the Act of 1835. *In re Oxford Charities*, (1837) 3 Myl. & Cr. 239; 1 Jur. 620; 45 R. R. 259. See also *R.* v. *Sankey*, (1836) 5 A. & E. 423; 6 N. & M. 839; 2 H. & W. 275; 5 L. J. (N. S.) K. B. 255; 44 R. R. 453. *Attorney-General* v. *Phillimore*, (1840) 9 L. J. Ch. 338; *Attorney-General* v. *Shrewsbury*, (1843) 6 Beav. 220.

Special Trusts and Powers.

Corporation to be trustee where corporators trustees.

134. The municipal corporation of a borough shall be trustees for executing by the council the powers and provisions of all Acts of Parliament made before the passing of the Municipal Corporations Act, 1835 (other than Acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the body corporate of the borough, or any of the members thereof in their corporate capacity, was or were sole trustees before the first election of councillors in the borough under the Municipal Corporations Act, 1835.

As to the substitution of the council for the former trustees for executing the provisions of a local Act, see *Reg.* v. *Corporation of Poole*, (1838) 7 A. & E. 730; 3 N. & P. 119; *Staniland* v. *Hopkins*, (1841) 9 M. & W. 178.

Appointment of members of council to be trustees in cases of joint trusts and other cases.

135.—(1.) In every borough in which the body corporate, or a particular or limited number, class or description of members thereof, or of persons appointed by the body corporate, was or were before the passing of the Municipal Corporations Act, 1835, trustees jointly with other trustees for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees thereof, by any statute, charter, byelaw, or custom, before the passing of the Municipal Corporations Act, 1835, was or were, lawfully appointed to or exercised any powers, duties, or functions, not otherwise in the Municipal Corporations Act, 1835, or this Act, provided for, and the continuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination, or appointment of trustees, or on which a new election, nomination, or appointment has usually been made, (and if there is no day prescribed or usually observed, then on or within ten days after the first of January in every year,) shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there where* theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

* *Sic.*

(2.) In every case of extraordinary vacancy among the trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold his trust or office for such time as that person would regularly have held it.

Local Acts.

Transfer of powers of local authorities to municipal corporations.

136.—(1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

(2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.

Under 20 & 21 Vict. c. 50, s. 2, which is replaced by this section, it was held that a local board acting under the Public Health Acts could not transfer their powers to the corporation. *Swinford* v. *Keble*, (1866) L. R. 1 Q. B. 549; 7 B. & S 573; 35 L. J. Q. B. 185; 14 L. T. (N. S.) 770; 14 W. R. 858. The power given by the text is expressly limited to trustees acting under a local Act. As to the borough of Cambridge, see s. 257 (6), *post*. This section, however, can only apply to exceptional cases, because the powers and duties of trustees acting in a borough under a local Act for purposes the same as or similar to those of the Public Health Act, 1875, were transferred to the town council as the urban authority by s. 10 of that Act. As to the power of the Local Government Board to repeal or amend any such local Act by provisional order, see s. 303 of that Act. Where the council act in the execution of a local Act by virtue of this section, their proceedings are regulated by the provisions of this Act and not by those contained in the local Act as to the meetings of trustees. *Mayor of Kidderminster* v. *Court*, (1859) 1 E. & E. 770; 28 L. J. M. C. 148; 5 Jur. (N. S.) 1055; 7 W. R. 412.

Power for council to extend local lighting Act.

137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorized to be levied for lighting.

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(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough.

As to the powers of a town council acting as the urban authority with respect to lighting, see ss. 161—163 of the Public Health Act, 1875 (38 & 39 Vict. c. 55).

Exercise of powers under local Acts.

* *Sic.*

138. Everything provided under any local Act of Parliament in force on the twentieth or * August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature, if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

As to what is a matter relating to the business of a court of civil judicature within this section, see *Palmer* v. *Powell*, (1840) 6 M. & W. 627; 9 L. J. (N. S.) Ex. 209; 4 Jur. 825; 55 R. R. 747.

PART VII.

BOROUGH FUND: BOROUGH RATE: COUNTY RATE.

[This Part (ss. 139—153) does not apply to county councils.]

Borough Fund.

Payments to borough fund.

139. The rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all money, dues, chattels, and valuable securities belonging or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and as far as the application thereof is otherwise provided for) shall go to the borough fund.

Various other payments are directed by this Act and by other Acts of Parliament to be made to the borough fund.

Before the Municipal Corporations Act of 1835 was passed the corporation were the owners of the corporate funds and could dispose of them as they pleased; now, however, the borough fund is a trust fund which can only be applied in the manner provided by the next section. See *Arnold* v. *Mayor of Gravesend*, (1856) 2 K. & J. 574; 25 L. J. Ch. 776; 2 Jur. (N. S.) 703; 27 L. T. (O. S.) 97; 4 W. R. 478.

This section applies only to the interest or dividends arising from moneys belonging to the borough, and it has been held that the principal sum arising from the sale of corporate lands to the Government for military purposes could not be applied in payment of the corporation's debts. *Ex parte Corporation of Hythe*, (1840) 4 Y. & C. 55.

Part VII. Section 140.

Application of borough fund.

140.—(1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule (*a*).

(2.) The payments specified in Part I. of that schedule may be made without order of the council; those specified in Part II. may not be made without such order (*b*).

(3.) No other payment shall be made out of the borough fund, except—

(a) Under the authority of an Act of Parliament (*c*); or

(b) By order of the council (*d*); or

(c) By order of the court of quarter sessions for the borough (*e*); or

(d) By order of a justice in pursuance of this Act; or

(e) In cases in which the court of quarter sessions for a county, or a justice acting in and for a county in the discharge of his judicial duty, might make an order for the payment of money on the treasurer of the county.

(4.) Saving, nevertheless, in relation to the application of the borough fund as authorized by this section, or otherwise by this Act, all rights, interests, and demands of all persons in or on the real or personal estate of the municipal corporation, by virtue of any legal proceeding, or of any mortgage, or otherwise (*f*).

(*a*) The payments specified in the Fifth Schedule comprise what may be called the normal expenses of the borough, such as the remuneration of the mayor, the recorder, and other officers, registration and election expenses, maintenance of corporate buildings, &c. The last of the payments specified in that schedule comprises "All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect." See the notes to that schedule, *post*, p. 180, as to payments which may lawfully be made out of the borough fund.

If the borough fund is insufficient to meet these payments, the council can raise the amount required by a borough rate under s. 144; but they have no implied power to contract a temporary loan for this purpose until they can obtain the money out of the rates. See *Reg.* v. *Reed*, (1880) 5 Q. B. D. 483; 49 L. J. Q. B. 600; 42 L. T. 835; 28 W. R. 787; 44 J. P. 633. As to the application of the surplus where the borough fund is more than sufficient for the purposes to which it is applicable, see s. 143.

(*b*) In cases where an order of the council is required for any payment, the order must be made in the manner required by s. 141, and is subject to disallowance by the High Court on a writ of *certiorari* under that section.

(*c*) See for instance the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), s. 2, *post*, p. 282; the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 30, *post*, p. 328; the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), s. 18, *post*, p. 525; the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 28, *post*, p. 557; the Licensing Act, 1902 (2 Edw. 7, c. 28), s. 20; the Education Act, 1902 (2 Edw. 7, c. 42), s. 18, *post*, p. 607.

As to the power of the council to pay out of the borough fund any sums payable by an officer or servant of theirs against whom proceedings have been taken in respect of something done by him when acting in the execution of this Act, see s. 226.

(*d*) Sub-section (3) is a restraining and not an enabling enactment. Clause (b) does not authorize the council to make payments out of the borough fund for any purpose that they think fit, subject only to disallowance under s. 141, but refers to the payments that may be made under s. 143 where the borough fund has a surplus. A municipal corporation will be restrained by injunction from applying the borough fund to purposes not authorized by this section or by some other Act of Parliament. *Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404; 15 T. L. R. 370. See the cases cited in the note to Sched. 5, Part II., r. 12, *post*, p. 182.

(*e*) In the case of a borough having a separate court of quarter sessions the costs of

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prosecutions for felony were formerly payable by the borough by order of the Court under s. 169, but this section has been repealed. See now the costs in Criminal Cases Act, 1908, *post*.

(*f*) Sub-section (4) is merely a saving clause for existing rights, and does not authorize the payment out of the borough fund of a judgment obtained in respect of expenses which are not properly payable out of that fund. *Attorney-General* v. *Mayor of Newcastle-upon-Tyne*, (1889) 23 Q. B. D. 492; 58 L. J. Q. B. 558; 54 J. P. 292; affirmed on another point by the House of Lords, [1892] A. C. 568; 62 L. J. Q. B. 72; 67 L. T. 728; 56 J. P. 836. See also s. 131 (1) as to debts contracted before 1835.

Orders for payment of money.

141.—(1.) An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk.

(2.) Any such order may be removed into the Queen's Bench Division of the High Court by writ of certiorari, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

This section gives the High Court plenary power over every order made by the council for payment of money out of the borough fund. The following are instances of payments which have been disallowed on *certiorari*: the costs of defending proceedings by *quo warranto* taken against certain members of the council, *Reg.* v. *Mayor of Bridgewater*, (1839) 10 A. & E. 281; 2 P. & D. 558; the costs of a prosecution for libel on an inspector of the borough police, *Reg.* v. *Mayor of Liverpool*, (1872) 41 L. J. Q. B. 175; 26 L. T. (N. S.) 101; 20 W. R. 389; and the costs incurred by the chief constable of the borough in defending an action for malicious prosecution, *Reg.* v. *Mayor of Exeter*, (1880) 6 Q. B. D. 135; 44 L. T. 101; 29 W. R. 441; 45 J. P. 158. The Court refused to disallow payments made out of the borough fund for work done on the ground that the claim was unenforceable because the contract for the work was not made under seal. *Reg.* v. *Prest*, (1850) 16 Q. B. 32; *Reg.* v. *Mayor of Norwich*, (1882) 30 W. R. 752; 46 J. P. 308. But a payment which is prohibited by statute will not be allowed, such as a commission paid by the council to one of their officers on the amount of a contract entered into by them, contrary to s. 193 of the Public Health Act, 1875. *Reg.* v. *Mayor of Ramsgate*, (1889) 23 Q. B. D. 66; 58 L. J. Q. B. 352; 61 L. T. 333; 37 W. R. 781; 53 J. P. 740; 5 T. L. R. 434.

A resolution of the council authorizing the payment of money can be brought up under this section although no order for payment has been made in the manner required by sub-s. (1). *Reg.* v. *Mayor of Lichfield*, (1843) 4 Q. B. 893; 12 L. J. Q. B. 308; 7 Jur. 670.

Where an order for payment of money has been quashed, the members of the council who joined in making the order may be ordered to pay the costs of the *certiorari*. *Reg.* v. *Vaile* (or *Whiteley*), (1889) 23 Q. B. D. 483; 58 L. J. M. C. 164; 61 L. T. 253; 54 J. P. 134.

There is no fixed rule which requires that proceedings by *certiorari* under this section must be taken within six months after the making of the order. *Reg.* v. *Mayor of Sheffield*, (1871) L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; 24 L. T. (N. S.) 659; 19 W. R. 1159. An appeal lies to the Court of Appeal under s. 19 of the Judicature Act, 1873 (36 & 37 Vict. c. 66). The procedure on an application for a writ of *certiorari* is regulated by rules 20—31 of the Crown Office Rules, 1906.

An order of a borough council for the payment of any money for the purposes of the Public Health Acts may in like manner be removed by *certiorari*. Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 246. Where a town council had expended money in paving a road in the borough with tarmac, the Court refused to disallow the payment because the improvement had been made in good faith for the benefit of the inhabitants of the borough, although the council had been influenced in deciding to make the improvement at the time when they did by the fact that the Automobile Club were about to hold a meeting there. *R.* v. *Brighton Corporation*, (1907) 96 L. T. 762; 71 J. P. 265; 5 L. G. R. 584; 23 T. L. R. 440.

Similar provisions with regard to an order of a county council for the payment of money out of the county fund are contained in s. 80 of the Local Government Act, 1888.

The remedy provided by this section is not exclusive, and there is nothing to prevent the Court from granting an injunction to restrain illegal expenditure. *Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404; 15 T. L. R. 370.

Payments to and by treasurer.

142.—(1.) All payments to and out of the borough fund shall be made to and by the treasurer.

(2.) All payments to the treasurer shall go to the borough fund.

An application by a burgess for a *mandamus* directing the mayor to pay over to the treasurer the amount of the rents of some corporate land which he had received was refused on the ground that such an application ought to be made by the treasurer. *Reg.* v. *Frost*, (1838) 8 A. & E. 822.

The treasurer is not a mere servant of the council; he stands in a fiduciary relation to the burgesses as a body and cannot plead the orders of the council as an excuse for an unlawful act. If an order is made upon him to pay expenses without jurisdiction, it is his duty to disobey it. *Attorney-General* v. *De Winton*, [1906] 2 Ch. 106; 75 L. J. Ch. 612; 54 W. R. 499; 70 J. P. 368; 4 L. G. R. 549; 22 T. L. R. 446.

Application of surplus of borough fund.

143.—(1.) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough (*a*).

(2.) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed (*b*).

(*a*) For the purposes to which the borough fund is applicable, see s. 140; and see note (*c*) to that section for other Acts by which payments out of the borough fund are authorized.

A borough council entered into an agreement with a railway company by which they agreed to pay an annual sum for fifteen years in consideration of the company's agreeing to throw open a footbridge in the borough belonging to them for the use of foot passengers free of toll. In an action for an injunction to restrain the council from making such payment, it was held that the advantage obtained by the agreement was for the public benefit of the inhabitants and improvement of the borough, and that if in any year there was a surplus of the borough fund the council were entitled to apply it in paying the amount due under the agreement, though they could not make such payment out of the borough fund unless there was a surplus, or make a borough rate under s. 144 for the purpose of creating a surplus. *Attorney-General* v. *Mayor of Newcastle-upon-Tyne*, (1889) 23 Q. B. D. 492; 58 L. J. Q. B. 558; 54 J. P. 292; affirmed by the House of Lords, [1892] A. C. 568; 62 L. J. Q. B. 72; 67 L. T. 728; 56 J. P. 836.

Where a town council were empowered by a local Act to contribute a certain amount towards the cost of a university college which was to be established in the borough, it was held that the payment of interest on that amount, which was not authorized by the local Act, was not a payment for the public benefit of the inhabitants and improvement of the borough. *Attorney-General* v. *Cardiff Corporation*, [1894] 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. 591; 10 T. L. R. 420.

It is very doubtful whether the council would be justified in applying a surplus to the payment of costs incurred by the chief constable in opposing by their direction

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appeals against the refusal of justices to renew publicans' licences, because the administration of the licensing laws is outside the functions of a borough council. *Tynemouth Corporation* v. *Attorney-General*, *ante*, p. 107, per Lord Shand.

The payment of the costs of a prosecution instituted by an inspector of the borough police for a libel published with regard to him while acting in the execution of his duties was held not to be for the public benefit of the inhabitants. *Reg.* v. *Mayor of Liverpool*, *ante*, p. 106.

(*b*) Boroughs to which this Act applies are constituted urban districts for the purposes of the Public Health Act, 1875 (38 & 39 Vict. c. 55), by s. 6 of that Act.

Borough Rate.

Power for council to make borough rate and assess contribution thereto.

144.—(1.) If the borough fund is insufficient for the purposes to which it is applicable under this Act or otherwise by law, the council shall from time to time estimate, as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes (*a*).

(2.) In order to raise that amount, the council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough (*b*).

(3.) A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment, at any time within six months before the making of the rate (*c*).

(4.) The council shall assess the contributions to the borough rate on the several parishes and parts of parishes in the borough in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate (*d*).

(5.) That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate (*e*).

(6.) But if for any reason the council think that the valuation list or poor rate is not a fair criterion of value they may cause an independent valuation to be made.

(7.) For the purpose of assessing a borough rate, or for the purpose of an independent valuation, the council from time to time may cause any of the books of assessment of any rates or taxes, parliamentary or parochial, on any property, and the valuation by which the assessment is made, in the hands of the overseers, to be brought before them, and may take copies thereof or extracts therefrom, or may direct any person to take copies of or extracts from such books being in his hands, without having the same brought before the council, or may call before them any overseer to give evidence respecting the same; and may cause copies of the total amount assessed in each parish in respect of any tax payable to the Crown, and the total amount of the valuation of the property on which that assessment was made in any past year, to be made out by the clerk to the commissioners of each district (*f*).

(8.) The overseers and such persons as they select, by warrant of the council, signed by the mayor and sealed with the corporate seal, may enter on, view, and examine any land chargeable to the borough rate, in order to ascertain the annual value at which it ought to be

charged ; but no such entry shall in any case be made unless fourteen days' previous notice in writing, signed by the mayor and sealed with the corporate seal, of the intention to make the entry, has been given to the overseers and to the persons on whose land the entry is to be made.

(9.) If on any occasion the overseers of a parish think that their parish is aggrieved by a borough rate, on account of the proportions assessed as the contributions of the respective parishes being unequal, or on account of some parish being without sufficient cause omitted, or on account of any other just cause of complaint, they may appeal to the recorder at the next quarter sessions for the borough, or if there is none, to the next quarter sessions for the county wherein the borough is situate, or whereto it is adjacent, against such part of the rate only as affects their parish (*g*).

(10.) The recorder or quarter sessions shall hear and finally determine the appeal, and either confirm such parts of the rate as are appealed against, or correct any inequalities, disproportions, or omissions proved to exist therein, as to him or them appears just (*h*).

(11.) The expenses of the appeal shall be paid by such parishes or persons and in such proportions as the recorder or court having cognisance of the appeal directs.

(12.) If any person having custody of any book for which the council call under this section, fails to produce it to the council or to permit any copy thereof or extract therefrom to be made or taken, or to give such evidence as the council require, he shall, on summary conviction, be liable to a fine not exceeding ten pounds.

(13.) If any clerk to the commissioners of a district fails to make any copy, which he is required to make under this section, within a reasonable time after his receipt of the order to make it, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

(*a*) As to the purposes to which the borough fund is applicable, see s. 140. The power of making a borough rate cannot be exercised for the purpose of creating a surplus to be applied by the council as they think fit under s. 143 for the public benefit of the inhabitants and improvement of the borough. A rate can only be made under this section if the borough fund is insufficient for the purposes mentioned in s. 140, and can only be made to raise the amount estimated to be required to make the fund sufficient for such purposes. *Attorney-General* v. *Mayor of Newcastle-upon-Tyne*, (1889) 23 Q. B. D. 492 ; 58 L. J. Q. B. 558 ; 54 J. P. 292 ; affirmed by the House of Lords, [1892] A. C. 568 ; 62 L. J. Q. B. 72 ; 67 L. T. 728 ; 56 J. P. 836.

The estimate may include both future expenses and past expenses, the payment of which is authorized by sub-s. (3). *Reg.* v. *Worksop Local Board*, (1865) 5 B. & S. 951 ; 34 L. J. M. C. 220 ; 10 L. T. (N. S.) 297 ; 12 W. R. 710 ; 11 Jur. (N. S.) 1015 ; 28 J. P. 596.

(*b*) A borough rate is not made by the council like a general district rate, but is levied from the different parishes in the borough in the same way as the common fund of a poor law union is raised by contributions from the different parishes forming the union. The council assess the contributions to the borough rate on the several parishes in the borough in proportion to their total annual value for the purposes of the poor rate under sub-s. (4) of this section, and issue precepts to the overseers of each parish ordering them to pay the contribution of their parish out of the poor rate, under ss. 145 and 146. The borough rate therefore forms part of the poor rate. *Farmer* v. *London and North Western Railway*, (1888) 20 Q. B. D. 788 ; 59 L. T. 542 ; 36 W. R. 590. See also *Ash* v. *Nicholl* and *Cox* v. *Merriman*, cited in note (*i*) to s. 9,

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ante, p. 15. The order directing a rate need not be made in public. *Jones* v. *Johnson*, (1852) 7 Ex. 452; 21 L. J. M. C. 102; 16 Jur. 840.

(*c*) There is no general rule of law which prohibits a rate from being made retrospectively; each case is governed by the provisions of the particular statute under which the rate is made. *Harrison* v. *Stickney*, (1848) 2 H. L. C. 108; *Reg.* v. *Leigh Rural District Council*, [1898] 1 Q. B. 836; 67 L. J. Q. B. 562; 78 L. T. 604; 46 W. R. 471; 62 J. P. 355; 14 T. L. R. 325. The object of such a provision as is contained in this sub-section is to prevent the obvious inconvenience that would arise if the corporation were bound to pay cash down in respect of every item of expenditure incurred. The clause, however, does not justify the corporation in paying expenses incurred beyond the limit of six months by means of money borrowed from their bankers and adjusting their accounts so as to make it appear that such expenses have been incurred within the six months. See the judgment of Channell, J., in *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; 71 L. J. K. B. 639; 87 L. T. 171; 50 W. R. 651; 67 J. P. 5.

Under the Act of 1835, which contained no such provision as that of the text, it was held that a borough rate could not be made retrospectively. *Woods* v. *Reed*, (1837) 2 M. & W. 777; 6 L. J. (N. S.) M. C. 105; 1 Jur. 407; 46 R. R. 761. See, however, *Jones* v. *Johnson*, *supra*.

Under the similar provision contained in s. 210 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), relating to a general district rate, it has been held that where a claim is made against the council for goods supplied or work done, and the amount due is disputed, the debt is not ascertained until judgment is recovered against the council. A rate made for the purpose of paying the debt in the same rating year in which the amount due is thus ascertained cannot be objected to as being retrospective, and the Court will grant a *mandamus* directing the council to levy the amount by means of a rate, although more than six mouths have elapsed since the accruing of the cause of action, where the delay in commencing the action can be satisfactorily explained. *Worthington* v. *Hulton*, (1865) L. R. 1 Q. B. 63; 35 L. J. Q. B. 61; 6 B. & S. 943; 13 L. T. (N. S.) 463; 14 W. R. 632; 30 J. P. 22; 12 Jur. (N. S.) 73; *Reg.* v. *Leigh Rural District Council*, *supra*.

A rate cannot be objected to on the ground that it is retrospective where payment is directed by statute to be made out of the borough rate and from the nature of the case the rate must be retrospective. Thus the expenses of an election court in respect of the trial of an election petition against the return of a town councillor were ordered to be paid by a borough rate, although seven years had elapsed since the trial. *Reg.* v. *Mayor of Maidenhead*, (1882) 9 Q. B. D. 494; 51 L. J. Q. B. 444; 46 J. P. 724. See also *Jones* v. *Johnson*, *supra*; *Ward* v. *Lowndes*, (1859) 1 E. & E. 940; 29 L. J. Q. B. 40; 6 Jur. (N. S.) 247; 1 L. T. (N. S.) 268; 8 W. R. 81; 23 J. P. 357.

A judgment debt has been held to be a charge. *Reg.* v. *Rotherham Local Board*, (1858) 8 E. & B. 906; 27 L. J. Q. B. 156; 4 Jur. (N. S.) 261; 30 L. T. (O. S.) 271; 6 W. R. 248; 22 J. P. 641.

In the case of an award the six months run from the date when the award was made. *Ringland* v. *Lowndes*, (1863) 15 C. B. (N. S.) 173; 33 L. J. C. P. 25; 9 L. T. (N. S.) 479; 12 W. R. 1010; 10 Jur. (N. S.) 48.

(*d*) The order of the council ought merely to state the amount of the contribution required from each parish, leaving to the overseers the task of fixing the amount in the pound that is to be paid; but an order of the council directing a rate of sixpence in the pound to be made, and apportioning the amount to be raised, is not an invalid order for a rate. *Mayor of Durham* v. *Fowler*, (1889) 22 Q. B. D. 394; 58 L. J. Q. B. 246; 60 L. T. 456; 53 J. P. 374; 5 T. L. R. 238.

(*e*) The valuation list in force is the list made by the overseers and approved by the assessment committee, subject to any alterations or additions made by a supplemental list. Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 24.

(*f*) Such remuneration as the council think reasonable may be paid to the clerk to the commissioners for taxes in respect of making copies of assessments. Schedule 5, Part II., r. 9, *post*, p. 182.

(*g*) Under s. 92 of the Act of 1835 any person aggrieved had a right to appeal against a borough rate, but an appeal could only be made on the ground that the apportionment among the different parishes was unequal or that some parish had

been omitted. *Reg.* v. *Recorder of Bath*, (1839) 9 A. & E. 871; 8 L. J. M. C. 96; 1 P. & D. 622. The right of appeal is now confined to the overseers. Under the Act of 1835 it was held that notice of the appeal must be given to the town clerk, even where the borough was a county of itself with a separate court of quarter sessions. *Reg.* v. *Recorder of Carmarthen*, (1838) 7 A. & E. 756; 3 N. & P. 19.

(*h*) The recorder has no powers with respect to a borough rate except those that are conferred by this section. See s. 165 (4), *post*. The order made by the Court on the hearing of the appeal cannot be removed by *certiorari*. See s. 220, *post*; *Reg.* v. *Rippon Justices*, (1837) 7 A. & E. 417.

Collection of borough rate in undivided parish.

145.—(1.) Where a parish is wholly in a borough, the council may from time to time, if they think fit, order the overseers to pay the contribution of the parish to the borough rate out of the poor rate made or to be made for the parish.

(2.) The overseers shall pay the contribution to the council or as they order.

(3.) If the overseers fail to pay as ordered, the amount may be levied off the goods of them or any of them, by distress, by virtue of a warrant signed by the mayor and sealed with the corporate seal, or signed by two justices in and for the borough.

All sums levied in pursuance of the borough rate are to go to the borough fund. Section 149.

If the overseers fail to pay as ordered, it appears that the council must adopt the remedy provided by this section, instead of applying for a *mandamus* directing the overseers to levy the rate. *Reg.* v. *Hunslet Overseers*, (1859) 1 E. & E. 775; 28 L. J. M. C. 180; 7 W. R. 411.

Where the precept addressed by the treasurer of a borough to the overseers allowed a longer time for payment of the contribution than was fixed by the order of the council to the treasurer, it was held that the discrepancy did not invalidate the precept, and that the defendant was liable to distress although he had ceased to hold the office of overseer before the warrant was executed. The mayor may sign the warrant both as a justice of the borough and as mayor. *Jones* v. *Johnson*, *ante*, p. 110.

As to the right of the council to collect the borough rate by their own officers where they were authorized by law to do so before this Act was passed, see s. 250 (3).

Collection of borough rate in divided parish.

146.—(1.) Where a parish is partly in and partly out of a borough, the overseers, on receipt of an order for payment of money for the contribution of the part in the borough towards a borough rate, which order the council may make as if the whole parish was in the borough, shall assess on and levy from the occupiers of hereditaments rateable to the poor rate in that part of the parish the amount necessary for the contribution, either as a separate rate, for which the overseers shall have all the powers which belong to them for levying a poor rate, or with and as part of the poor rate to which occupiers in that part of the parish are liable in common with occupiers in the other part (*a*).

(2.) Any person rated under this section may appeal against the rate in like manner and with the like consequences, and subject to the like provisions and regulations, as in appeals against a poor rate.

(3.) The overseers shall pay the amount of the contribution to the council, or as they order, and in default thereof shall be subject to all provisions and penalties provided by law concerning non-payment of contribution to a borough rate (*b*).

(4.) Every overseer and collector shall account for the money collected and expended under this section to the auditor of the district comprising the parish in the like manner, and with the like incidents, consequences,

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liabilities, and power of appeal as in the case of the poor rate; and the Local Government Board shall have the like power to make orders to regulate the mode of accounting as they have in regard to other local rates (*c*).

(5.) If any balance is found in the hands of any such overseer or collector he shall apply it towards the next rate required under this section, or pay it to his successor in office.

(6.) In default of his so applying it while in office, or making payment to his successor within seven days after the balance is found, the auditor shall proceed to recover it (*d*).

(7.) The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect the rate under this section, and shall receive thereout such remuneration for the additional duty as the overseers, with the consent of the vestry, determine.

(8.) The collector or other person appointed shall, for the purposes of this section, have all the powers of overseers.

(9.) The overseers, in estimating the amount of their assessment under this section, may include a sum for costs of assessment and collection, and a reasonable sum for rates excused or irrecoverable.

(*a*) As to such parishes, see now s. 36 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 559.

(*b*) As to the remedy in case of failure to pay the contribution, see s. 145.

(*c*) The accounts of the overseers and collectors of poor rates are subject to audit by district auditors appointed by the Local Government Board. As to the proceedings at such audit and the right of appeal to the High Court or the Local Government Board against the decisions of the auditor, see 7 & 8 Vict. c. 101, ss. 32—36; 11 & 12 Vict. c. 91, ss. 4—10; 12 & 13 Vict. c. 103, ss. 9—11; 39 & 40 Vict. c. 61, ss. 37, 38; 42 & 43 Vict. c. 6.

(*d*) The auditor can take proceedings before the justices to recover the amount under 7 & 8 Vict. c. 101, s. 32, and 47 & 48 Vict. c. 43, s. 11; and the justices are not entitled to go behind the auditor's decision. *Reg.* v. *Finnis*, (1859) 1 E. & E. 935; 28 L. J. M. C. 201; 33 L. T. (O. S.) 146.

Rating of owners instead of occupiers for borough rate in certain cases. 32 & 33 Vict. c. 41.

147. Where the vestry of a parish has made or makes, before or after the commencement of this Act, under section four of the Poor Rate Assessment and Collection Act, 1869, an order, as in that section provided, to the effect that the owners, instead of the occupiers, of such rateable hereditaments as therein mentioned, shall be rated to the poor rate in respect thereof, every such order, while in force after the commencement of this Act, shall be deemed to apply to and include rating to the borough rate, with the same incidents, conditions, powers, liabilities, and remedies as if the borough rate were a poor rate.

Section 4 of the Poor Rate Assessment and Collection Act, 1869, is set out *post*, p. 251. The provisions of this section are made applicable to the watch rate by s. 197 (5), *post*.

Warrants for levy of borough rate.

148. Any warrant required for the levy or collection of a borough rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

See s. 145, *ante*.

Borough rate to go to borough fund; and its application.

149. All sums levied in pursuance of the borough rate shall go to the borough fund; and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough

fund is applicable under this Act, or otherwise by law; and, as regards a borough named in the schedules to the Municipal Corporations Act, 1835, to all purposes to which, before the passing of that Act, a borough rate was by law applicable in the borough, or a county rate was applicable in a county.

As to the purposes to which the borough fund is applicable, see ss. 140 and 143.

County Rate.

General exemption of quarter sessions boroughs from county rate.

150.—(1.) Where a borough has a separate court of quarter sessions, the justices of a county wherein the borough or any part thereof is situate shall not assess any hereditaments in the borough to any county rate; and, except as is expressly by this Act provided, every part of the borough shall be wholly free from contributing to any rate or assessment of any kind of and for that county.

(2.) But nothing in this section shall prevent the levy or collection of arrears of any county rate made before the grant of a separate court of quarter sessions.

A grant of a separate court of quarter sessions may be made under s. 162. Exceptions to the rule laid down in sub-s. (1) will be found in ss. 151 and 152. The powers of the justices in relation to the county rate have been transferred to the county council by s. 3 of the Local Government Act, 1888 (51 & 52 Vict. c. 41).

The county rate is levied under s. 26 of the County Rate Act, 1852 (15 & 16 Vict. c. 81), by means of precepts addressed by the county council to the guardians, who obtain the sums required from the overseers of the different parishes in their union out of the poor rate in the same manner as money required for the relief of the poor. The county rate therefore forms part of the poor rate. See note (b) to s. 144, *ante*.

The expression "a separate court of quarter sessions" means a court separate from that of the county in which the borough is situate. Thus the town of Ramsgate, which formed part of the liberties attached to the borough of Sandwich, was subject to the jurisdiction of the Sandwich court of quarter sessions. The boundaries of Ramsgate were afterwards extended by the addition of an adjoining area under a local Act which provided that if a charter was subsequently granted to Ramsgate as thus enlarged the quarter sessions of Sandwich should have jurisdiction over the whole area. A charter having subsequently been granted, it was held that Ramsgate was a borough having a separate court of quarter sessions, and that the added area was no longer liable to the county rates. *St. Laurence Overseers* v. *Justices of Kent*, (1887) 51 J. P. 262; 3 T. L. R. 519.

The exemption of quarter sessions boroughs (not being county boroughs) from liability to contribute to the county rate is partly removed in the case of the larger quarter sessions boroughs having a population of 10,000 or upwards in 1881 by s. 35 (2) and (5) of the Local Government Act, 1888, *post*, p. 426, and is taken away altogether in the case of the smaller quarter sessions boroughs by s. 38 (5) of that Act, *post*, p. 433. See the judgment of Vaughan Williams, L.J. in *Thetford Corporation* v. *Norfolk County Council*, [1898] 2 Q. B. 468; 67 L. J. Q. B. 907; 79 L. T. 315; 47 W. R. 1; 62 J. P. 724; 14 T. L. R. 541. County boroughs are provided for by ss. 31—34 of the Local Government Act, 1888, *post*, p. 420.

Liability of quarter sessions borough for prosecution expenses of county.

151. The municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay such sums, if any, as are expended out of the county rate of the county in which the borough is situate, and as are not otherwise paid or chargeable, in respect of the costs arising out of the [*prosecution*,] maintenance, conveyance, transport, or punishment of all offenders committed for trial from the borough to the assizes for the county.

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The word " prosecution " in this section is repealed by the costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 10, *post*, p. 659. See the note to s. 169, *post*.

The expenses of the maintenance of prisoners are payable out of moneys provided by Parliament. Prison Act, 1877 (40 & 41 Vict. c. 21), s. 4. By s. 16 of that Act the obligation of any borough which had a separate prison jurisdiction to maintain a prison or to provide prison accommodation for its prisoners was removed. As to the expenses of conveying persons to prison, see *Mullins* v. *Treasurer of Surrey*, (1881) 7 A. C. 1; 51 L. J. Q. B. 145; 45 L. T. 625; 30 W. R. 157; 46 J. P. 276; and as to the expense of providing clothing for a boy sent to a reformatory school, see *Prison Commissioners* v. *Liverpool Corporation*, (1880) 5 Q. B. D. 332; 49 L. J. Q. B. 431; 42 L. T. 838; 29 W. R. 6; 44 J. P. 616. As to the maintenance of a criminal lunatic, see 47 & 48 Vict. c. 64, s. 10.

Liability of certain quarter sessions boroughs to other county expenses.

152.—(1.) If the whole or any part of the area for the time being comprised in a borough having a separate court of quarter sessions was, before the eleventh of July one thousand eight hundred and thirty-two, chargeable with or liable to contribute to the county rate of the county in which it is situate, the municipal corporation shall, in addition to its liability to pay for the purposes mentioned in the last foregoing section, continue liable to contribute to the county rate for other purposes (in this Act referred to as general county purposes), as if this Act had not been passed.

38 & 39 Vict. c. 63.

(2.) General county purposes shall not include the costs arising out of coroners' inquests, or the expenses incurred under the Sale of Food and Drugs Act, 1875, in respect of the county, or, in the case of a borough having its own inspector of weights and measures, the expenses relating to the inspection of weights and measures for the county, or payments to or in respect of special constables.

Sub-section (1) is in accordance with the decision in *Reg.* v. *Monck*, (1877) 2 Q. B. D. 544; 46 L. J. M. C. 251; 36 L. T. 720.

The powers and duties of the council of a quarter sessions borough having a population of less than ten thousand in 1881 as regards coroners, the appointment of analysts under the Sale of Food and Drugs Acts, and weights and measures, have been transferred to the county council by ss. 38 & 39 of the Local Government Act, 1888, *post*, p. 431. See the notes to those sections. As to the expenses of coroners' inquests, see ss. 25—27 of the Coroners Act, 1887 (50 & 51 Vict. c. 71).

Mode of accounting by borough to county.

153.—(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county and having a separate court of quarter sessions an account shewing separately—

(a) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county; and

(b) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received;

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges.

(4.) If any difference arise concerning the account, it shall be decided by the arbitration of a barrister, named on the application either of the treasurer of the county or of the treasurer of the borough, by the Secretary of State. The arbitrator may, if he thinks fit, adjourn the hearing from time to time, and may require all such information to be afforded by either party as he thinks fit. He shall by his award in writing determine the amount to be paid by the council to the treasurer of the county, and his award shall be final and conclusive. He shall also assess the costs of the arbitration and determine by whom and out of what fund they shall be paid.

The county treasurer is now the treasurer of the county council. Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (x), 118 (13).

County rates may be levied by distress under a justice's warrant. 15 & 16 Vict. c. 81, s. 28.

As to the costs of prosecutions, see the note to s. 169, *post*.

PART VIII.

Administration of Justice.

[This Part (ss. 154—189) does not apply to county councils.]

County Justices.

Jurisdiction of county justices in borough.

154.—(1.) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county (*a*).

(2.) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exerciseable out of quarter sessions, of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835 (*b*).

(*a*) Before the Municipal Corporations Act, 1835, was passed, the county justices had concurrent jurisdiction in a borough with the borough justices, unless the charter of the borough contained a non-intromittent clause prohibiting them from interfering in the borough. *Blankley* v. *Winstanley*, (1789) 3 T. R. 279; 1 R. R. 704; *R.* v. *Sainsbury*, (1791) 4 T. R. 451; 2 R. R. 433. For examples of such a clause see *Mercer* v. *Davis*, (1830) 10 B. & C. 617; 5 Man. & Ry. 735; 8 L. J. (O. S.) M. C. 94; *Reg.* v. *East Looe Corporation*, (1862) 3 B. & S. 20; 31 L. J. M. C. 245; 10 W. R.

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866. This section gives the county justices jurisdiction in a borough which has no separate court of quarter sessions, whether there is a non-intromittent clause in the charter or not. *Reg.* v. *Deane*, (1841) 2 Q. B. 96; 1 G. & D. 292. See also *R.* v. *Warwickshire Justices*, [1902] 2 K. B. 101; 71 L. J. K. B. 505; 86 L. T. 568, 46 Sol. J. 409; 18 T. L. R. 492.

Under this section the county justices and the borough justices have exactly the same powers, and they may act together; but while the jurisdiction of the county justices includes offences committed within the borough, that of the borough justices is limited to such offences. In regard to such offences the borough justices and the county justices have concurrent jurisdiction, and a case is earmarked as borough business or as county business when a summons has been issued to appear before the borough or the county justices as the case may be. After the jurisdiction of either set of justices has appropriated the case, the other set of justices cannot intercept it by issuing a summons returnable before them, though all the justices are entitled to sit at the hearing of the summons. *Lawson* v. *Reynolds*, [1904] 1 Ch. 718; 73 L. J. Ch. 451; 90 L. T. 278; 52 W. R. 375; 68 J. P. 254; 2 L. G. R. 749; 20 T. L. R. 293.

(*b*) As to the exemption of a borough before 1835 from the jurisdiction of the county justices exerciseable out of quarter sessions, see *Reg.* v. *Inhabitants of Bridgewater*, (1839) 10 A. & E. 711; *Reg.* v. *Justices of Wilts*, (1848) 11 Q. B. 758.

Borough Justices.

Mayor and last mayor to be borough justices.

155.—(1.) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such a justice during the year next after he ceases to be mayor (*a*).

(2.) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice (*b*).

(*a*) The mayor of a borough other than a county borough is now by virtue of his office a justice of the peace for the county in which the borough is situate. Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 22 and 35, *post*, pp. 554, 559. At the expiration of his year of office he ceases to be a justice for the county, but remains a justice for the borough during the succeeding year. He must before acting as a justice take the oaths required to be taken by justices. Section 157, *post*.

As to disqualifications for the office of mayor, see ss. 12 and 39, *ante*. As to the removal from office of a justice who has been convicted of corrupt practices, see 46 & 47 Vict. c. 51, s. 38 (6), *post*, p. 405.

The mayor is entitled to act as a justice for the borough under this section, whether the borough has a separate commission of the peace or not. *Wilson* v. *Strugnell*, (1881) 7 Q. B. D. 548; 45 J. P. 831.

The mayor and the ex-mayor can sit together and form a court of petty sessions for the borough. *Lawson* v. *Reynolds*, *supra*.

Any person who is a justice of the peace by virtue only of holding or having held any office may be excluded from the exercise of his functions as such justice by the same authority by which other justices can be removed from the commission of the peace. Justices of the Peace Act, 1906 (6 Edw. 7, c. 16), s. 4, *post*.

The Qualification of Women (County and Borough Councils) Act, 1907 (7 Edw. 7, c. 33), which removes the disqualification of an unmarried woman for election as a councillor or alderman (see note (*e*) to s. 11, *ante*), provides that a woman if elected as chairman of a county council or mayor of a borough shall not by virtue of holding or having held that office be a justice of the peace.

(*b*) This provision does not entitle the mayor to take the chair at the hearing of

all cases in which the offence was committed within the borough. He is only entitled to do so where the case has been earmarked as borough business by the issue of a summons to appear before the borough justices. The fact that a case might have been dealt with as business of the borough does not make it such if the prisoner has been summoned to appear before the county justices. *Lawson* v. *Reynolds*, *ante*, p. 116.

As to the social precedence of the mayor, see the note to s. 15 (5), *ante*.

Separate commission of peace.

156. It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace.

See also ss. 187, 250 (5), *post*. The grant of a separate commission of the peace for the borough does not exclude the jurisdiction of the county justices in the borough under s. 154. The grant of a commission of the peace may be revoked on petition from the borough council under s. 38 (7) of the Local Government Act, 1888, *post*, p. 433; but the power to present such a petition is confined by that section to the smaller quarter sessions boroughs with a population under 10,000 according to the census of 1881.

Qualification of borough justice.

157.—(1.) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.

(2.) A justice for a borough shall not be capable of acting as such until he has taken the oaths required to be taken by justices, [*except the oath as to qualification by estate,*] and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

(3.) He must, while acting as such, reside in or within seven miles of the borough, or occupy a house, warehouse, or other property in the borough.

(4.) He need not be a burgess [*or have such qualification by estate as is required for a justice of a county*].

The words in italics are repealed by s. 5 of the Justices of the Peace Act, 1906 (6 Edw. 7, c. 16), *post*, p. 643, which has abolished the qualification by estate which was formerly required in the case of a county justice.

Justices of the peace are required by s. 6 of the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), to take the oath of allegiance and the judicial oath, the forms of which are prescribed by sections 2 and 4 of that Act, *post*, p. 247. As to the manner in which such oaths are to be taken, see 34 & 35 Vict. c. 48, s. 2, and the note thereto, *post*, p. 256; and as to the manner in which oaths are to be administered, see the Oaths Act, 1909 (9 Edw. 7, c. 39), *post*, p. 669. As to the right to make an affirmation instead of an oath, see 31 & 32 Vict. c. 72, s. 11; 51 & 52 Vict. c. 46, s. 1.

A borough justice must also make the declaration prescribed by the Eighth Schedule to this Act, Form B, *post*, p. 185.

As to what constitutes residence and occupation of property in the borough, see the notes to s. 9, *ante*. No qualification is required of a borough justice except that which is contained in sub-s. (3) of this section.

A solicitor is not disqualified for being a borough justice, but is usually required to give an undertaking not to practise before the bench. A solicitor may now be appointed a county justice, but in that case he may not nor may his partner practise before the justices for that county or any borough within the county. 6 Edw. 7, c. 16, s. 3, *post*.

Jurisdiction of borough justices.

158.—(1.) A justice for a borough shall, with respect to offences committed and matters arising within the borough, have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters

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arising within the county; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate (*a*).

(2.) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate (*b*).

(*a*) In a borough which has no separate court of quarter sessions and no non-intromittent clause in its charter, the borough justices are to be considered as county justices with their powers limited to a special locality. *Mayor of Reigate* v. *Hart*, (1868) L. R. 3 Q. B. 244; 37 L. J. M. C. 70; 18 L. T. (N. S.) 237; 16 W. R. 896; 32 J. P. 342. Where the county justices adjudicated upon a summons for an offence committed within a borough and refused to allow the borough justices to take part in the proceedings, an order made by them committing the defendant for trial was quashed with costs against the justices as having been made without jurisdiction. *Reg.* v. *Williamson*, (1891) 7 T. L. R. 534.

As to the powers of borough justices with respect to the appointment of overseers and the administration of the law relating to the relief of the poor, see 12 & 13 Vict. c. 8; 12 & 13 Vict. c. 64; 15 & 16 Vict. c. 38. For an instance of their jurisdiction under a local Act, see *Reg.* v. *Sutcliffe, In re Bathwick Paving Act*, (1849) 13 Q. B. 833; 18 L. J. Q. B. 301; 3 New Sess. Cas. 634.

(*b*) Section 2 of the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115), provides that a justice of the peace shall not be incapable of acting as such on the trial of an offence arising under an Act to be put in execution by a municipal corporation by reason only of his being as one of several ratepayers or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go. A similar provision with respect to justices acting under the Public Health Act, 1875 (38 & 39 Vict. c. 55), is contained in s. 258 of that Act. Subject to these exceptions, justices are disqualified for acting if they have a pecuniary interest in the subject-matter which is before the court. They may also be disqualified on the ground that a man may not act as a judge in his own cause; for instance, where they are members of a local authority by whom the proceedings are taken, and have joined in directing the prosecution. See *Reg.* v. *London County Council*, [1892] 1 Q. B. 190; 61 L. J. M. C 75; 66 L. T. 168; 40 W. R. 285; 56 J. P. 8; 8 T. L. R. 175; *Reg.* v. *Henley*, [1892] 1 Q. B. 504; 61 L. J. M. C. 135; 66 L. T. 675; 40 W. R. 383; 56 J. P. 391; 17 Cox C. C. 518; *Allinson* v. *General Council of Medical Education*, [1894] 1 Q. B. 750; 63 L. J. Q. B. 534; 70 L. T. 471; 42 W. R. 289; 58 J. P. 542; 10 T. L. R. 304; *Reg.* v. *Huggins*, [1895] 1 Q. B. 563; 64 L. J. M. C. 149; 72 L. T. 193; 43 W. R. 329; 59 J. P. 104; 18 Cox C. C. 94; 11 T. L. R. 205; *Reg.* v. *Burton*, [1897] 2 Q. B. 468; 66 L. J. Q. B. 831; 77 L. T. 364; 46 W. R. 127; 61 J. P. 727; 18 Cox C. C. 647. Further, they may be disqualified if the circumstances of the case show that they were in fact biased or did not act impartially. See *Reg.* v. *Rand*, (1866) L. R. 1 Q. B. 230; 35 L. J. M. C. 157; *Reg.* v. *Milledge*, (1879) 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T. 748; 27 W. R. 659; *Reg.* v. *Handsley*, (1881) 8 Q. B. D. 383; 51 L. J. M. C. 137; 30 W. R. 368; 46 J. P. 119; *Reg.* v. *Lee*, (1882) 9 Q. B. D. 394; 30 W. R. 750; 47 J. P. 118; *R.* v. *Justices of Sunderland*, [1901] 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 65 J. P. 598; 17 T. L. R. 551; *R.* v. *Tempest*, (1902) 86 L. T. 585; 66 J. P. 472; 18 T. L. R. 433.

Clerk to borough justices.

159.—(1.) The justices for a borough shall from time to time appoint a fit person to be their clerk, to be removeable at their pleasure (*a*).

(2.) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.

(3.) The clerk to the justices shall not, by himself or his partner

or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions.

(4.) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action (*b*).

(5.) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it (*c*).

(6.) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August one thousand eight hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices (*d*).

(*a*) As to the qualification of the justices' clerk, see s. 7 of the Justices' Clerks Act, 1877 (40 & 41 Vict. c. 43), *post*, p. 325. He is paid by a salary out of the borough fund under 14 & 15 Vict. c. 55, s. 9, *post*, p. 238, and 40 & 41 Vict. c. 43, s. 2, *post*, p. 322. The liability to pay his salary has not been transferred to the county council by s. 84 of the Local Government Act, 1888. See the note to that section, *post*, p. 449.

The clerk may be dismissed at any time without notice and without any reason being assigned; and his dismissal cannot be questioned by *quo warranto*. *Reg.* v. *Fox* (or *Cox*), (1858) 8 E. & B. 939; 27 L. J. Q. B. 151; 4 Jur. (N. S.) 410; 30 L. T. (O. S.) 273; 6 W. R. 282.

The power of appointing a clerk under this section applies only to boroughs having a separate commission of the peace. In the case of a borough which has no separate commission of the peace, the mayor and ex-mayor have no power to appoint a clerk, but a clerk may be appointed by the justices of the petty sessional division in which the borough is comprised, if the requirements of s. 5 of the Justices' Clerks Act, 1877, are complied with. *Huntingdon Corporation* v. *Huntingdon County Council*, [1901] 2 K. B. 257; 70 L. J. K. B. 755; 85 L. T. 26; 65 J. P. 675; 17 T. L. R. 521.

(*b*) If the clerk acts in contravention of sub-s. (3) he is liable to a penalty, but does not thereby become disqualified for holding his office. *Reg.* v. *Fox*, *supra*. For a case in which a clerk was held to be interested in prosecutions by the fact that he received half the fees taken by his partner, see *Reg.* v. *Fox*, (1859) 1 E. & E. 729; 28 L. J. M. C. 157; 5 Jur. (N. S.) 1248; 33 L. T. (O. S.) 90; 7 W. R. 410.

An action to recover a fine under this section may be brought by anyone. See *Reg.* v. *Stewart*, [1896] 1 Q. B. 300; 65 L. J. M. C. 83; 74 L. T. 54; 44 W. R. 368; 60 J. P. 356; 18 Cox C. C. 232. Neither the provisions of s. 224, *post*, nor those of the Public Authorities Protection Act, 1893, *post*, apply to such an action.

(*c*) The other moiety of the fine goes to the borough fund under s. 139, *ante*.

(*d*) See *Brown* v. *Evans*, (1876) 35 L. T. 877; 24 W. R. 937; 40 J. P. 40.

Justices room.

160.—(1.) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices room, with offices, for the business of the borough justices.

(2.) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

See s. 105, *ante*, as to the power of the corporation to purchase land for the purpose of building this room. The council of a borough are empowered by 12 & 13 Vict. c. 18, s. 2, to provide a fit and proper place for holding petty sessions, or to contract for the use of the county court for that purpose. They may also, with the approval of a Secretary of State, enter into an agreement with the council of another borough or boroughs or with the county council for the provision of a petty sessional court-house at their joint expense for the use of each of the authorities concerned. See

Part VIII. Section 160. 31 & 32 Vict. c. 22, s. 4; 42 & 43 Vict. c. 49, s. 30; 47 & 48 Vict. c. 43, s. 8, as amended by 51 & 52 Vict. c. 41, s. 3.

Stipendiary Magistrate.

Appointment of stipendiary magistrate.

161.—(1.) If the council desire the appointment of a stipendiary magistrate for the borough, they may present a petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven years standing.

(2.) He shall hold office during Her Majesty's pleasure.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council, that mentioned in the petition, as Her Majesty from time to time directs.

(5.) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.

(6.) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.

(7.) More than one stipendiary magistrate may be appointed for a borough.

A stipendiary magistrate has power to do alone any act which may be done by two justices of the peace, and when sitting in a court-house is to be deemed to be a court of summary jurisdiction. 21 & 22 Vict. c. 73, s. 1; 42 & 43 Vict. c. 49, s. 20. He may act as one of the licensing justices under 35 & 36 Vict. c. 94, s. 39. As to his power to appoint a deputy, see 32 & 33 Vict. c. 34.

If a stipendiary magistrate is incapable of appointing or removing a deputy, this may be done by the Secretary of State, who can also appoint some one to act temporarily in the office if it becomes vacant and there is no deputy. 6 Edw. 7, c. 46, *post*, p. 645.

Borough Quarter Sessions: Recorder: Clerk of the Peace.

Grant of separate court of quarter sessions.

162.—(1.) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be holden in and for the borough.

(2.) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder.

(3.) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.

(4.) Within ten days after receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

A borough which has a separate court of quarter sessions is with certain exceptions exempted from contributing to the county rate by s. 150, *ante*.

The grant of a court of quarter sessions to a borough other than a county borough after the passing of the Local Government Act, 1888, is not to exempt the parishes in the borough from being assessed to county contributions for any purpose to which such parishes were previously liable to be assessed. Local Government Act, 1888, s. 37, *post*, p. 431.

In the case of the smaller quarter sessions boroughs with a population under 10,000 according to the census of 1881, the grant of a separate court of quarter sessions may be revoked on the petition of the council under s. 38 (7) of the Local Government Act, 1888, *post*, p. 433.

The recorder.

163.—(1.) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years standing to be recorder of the borough.

(2.) He shall hold office during good behaviour.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) He shall not act as recorder, or as a justice, until he has taken the oaths required to be taken by a borough justice, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

(5.) He shall have precedence in all places within the borough next after the mayor.

(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.

(7.) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made, as Her Majesty directs; but the same may at any time be increased by resolution of the council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.

(8.) A person may be appointed recorder of two or more boroughs conjointly.

For the oaths required to be taken by a borough justice, see the note to s. 157, *ante*.

As to the precedence of the mayor, see ss. 15 (5) and 155. The recorder is empowered by s. 166 to appoint a deputy in certain cases.

The salary is payable out of the borough fund under s. 140 and Sched. 5, *post*, and cannot be recovered by an action of debt. *Addison* v. *Mayor of Preston*, (1852) 12 C. B. 108; 21 L. J. C. P. 146; 16 Jur. 643.

The clerk of the peace.

164.—(1.) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.

(2.) The clerk of the peace shall hold office during good behaviour.

(3.) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity, or absence.

(4.) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.

(5.) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled.

(6.) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements as he thinks proper, and any such table shall be of no validity until it is so confirmed.

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The clerk of the peace may be removed from office for misconduct by the recorder, who, by virtue of s. 165, *post*, exercises the jurisdiction of quarter sessions under 1 Will. & Mary, sess. 1, c. 21, s. 6, and 27 & 28 Vict. c. 65. *Reg.* v. *Hayward*, (1862) 2 B. & S. 585; 31 L. J. M. C. 177; 6 L. T. (N. S.) 285; 10 W. R. 558.

If the clerk of the peace is incapable of appointing or removing a deputy, this may be done by the council, who can also appoint some one to act temporarily in the office if it becomes vacant and there is no deputy. 6 Edw. 7, c. 46, *post*, p. 645.

No defect in the appointment of a deputy under this Act is to invalidate his acts. Section 237, *post*.

The table of fees must be posted in the manner required by s. 234, *post*. The clerk of the peace may be paid by salary in lieu of fees under 14 & 15 Vict. c. 55, s. 9, *post*, p. 238.

Recorder to hold court of quarter sessions.

165.—(1.) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough (*a*).

(2.) He shall sit as sole judge of the court.

(3.) The court shall be a court of record, and shall have cognisance of all crimes, offences, and matters cognisable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts (*b*).

(4.) But the recorder shall not, by virtue of his office, have power

(a) To allow, apportion, make, or levy any borough rate; or

(b) Subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever (*c*); or

(c) To grant any licence or authority to any person to keep an inn, alehouse, or victualling house to sell exciseable liquors by retail (*d*); or

(d) To exercise any power by this Act specially vested in the council.

(*a*) The authority of the recorder is not determined by the judges coming into the county to hold the assizes; so that he may hold his court of quarter sessions at the same time that the assizes are being held for the same county. *Smith* v. *Reg.*, (1849) 13 Q. B. 738; 18 L. J. M. C. 207; 3 New Sess. Cas. 564; 13 Jur. 850.

(*b*) The recorder has exclusive jurisdiction to hear appeals against orders of removal made by borough justices, and against orders for removal from a parish within the borough made by county justices. *Reg.* v. *Suffolk Justices*, (1841) 2 Q. B. 85; 10 L. J. M. C. 138; 5 J. P. 484; 1 G. & D. 146; *Reg.* v. *Recorder of Liverpool*, (1850) 15 Q. B. 1070. This section also gives him cognisance of appeals against orders of borough justices for the payment of the expenses incurred in removing a pauper lunatic to an asylum, *Reg.* v. *Inhabitants of St. Lawrence*, (1839) 11 A. & E. 170; 3 P. & D. 155; 4 Jur. 245; 52 R. R. 297; and of appeals against orders for the maintenance of lunatic paupers removed from a parish within the borough. *Reg.* v. *Lancashire Justices*, (1852) 18 Q. B. 361; 21 L. J. M. C. 164. An indictment under 25 Geo. 2, c. 36, for keeping a disorderly house may be tried by the recorder. *Reg.* v. *Charles*, (1861) 1 L. & C. 90; 31 L. J. M. C. 69; 7 Jur. (N. S.) 1308; 5 L. T. (N. S.) 328; 10 W. R. 62; 9 Cox C. C. 18. The recorder has power to reserve a case for the consideration of the Court for Crown Cases Reserved under 11 & 12 Vict. c. 78. *Reg.* v. *Masters*, (1848) 1 Den. C. C. R. 332; 3 New Sess. Cas. 326; 12 Jur. 942.

(*c*) This provision does not preclude the recorder from hearing appeals against poor rates, of which he has cognisance under sub-s. (3) of this section. See also s. 144 (9), *ante*, under which the recorder has jurisdiction to hear appeals against a borough rate.

(*d*) Under clause (c) it has been held that the recorder has no jurisdiction to hear an appeal against the refusal of the borough justices to grant an alehouse licence, even though the charter of the borough has a non-intromittent clause. *Reg.* v.

Deane, (1841) 2 Q. B. 96; 1 G. & D. 292; *Reg.* v. *Cockburn* (or *Recorder of Bristol*), (1854) 4 E. & B. 265; 24 L. J. M. C. 43; 1 Jur. (N. S.) 373; 24 L. T. (O. S.) 156; 3 W. R. 69. But this provision does not prevent the recorder from hearing an appeal against an order of licensing justices for the borough under s. 11 (4) of the Licensing Act, 1902, requiring structural alterations to be made in licensed premises, for such an order is not a condition of the renewal of the licence. *R.* v. *Recorder of Bath*, [1904] 2 K. B. 570; 73 L. J. K. B. 848; 91 L. T. 383; 68 J. P. 438; 20 T. L. R. 526.

Power to appoint deputy recorder.

166.—(1.) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.

(2.) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

If the recorder is incapable of appointing or removing a deputy, this may be done by the Secretary of State, who can also appoint some one to act temporarily in the office if it becomes vacant and there is no deputy. 6 Edw. 7, c. 46, *post*, p. 645.

No defect in the appointment of a deputy under this Act is to invalidate his acts. Section 237, *post*.

As to the power of the recorder to appoint a deputy to act as judge of the borough civil court, see s. 175 (2), *post*, and see 35 & 36 Vict. c. 86, s. 7, *post*, p. 279.

Powers of mayor in absence of recorder and deputy recorder.

167.—(1.) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognisances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.

(2.) But nothing in this section shall authorize the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

Power for recorder to form a second court.

168.—(1.) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days, including the day of assembling, he may in his discretion, but subject to the provisions of this section, order a second court to be formed, and appoint by writing signed by him a barrister of five years standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.

(2.) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.

(3.) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced.

(4.) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.

(5.) Where a second court is so formed, the clerk of the peace shall

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on the request of the recorder, appoint an assistant, and the recorder shall appoint an additional crier for the second court.

(6.) The recorder shall not exercise the powers given by this section unless—

(a) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised; and

(b) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.

(7.) Where a resolution of the council is so certified, the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.

(8.) An assistant recorder, assistant clerk of the peace, and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.

(9.) The powers given to the recorder by this section may be exercised by the deputy recorder.

(10.) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

Liability of borough having quarter sessions for prosecutors' expenses.

169. [*A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough.*]

This section has been repealed by the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), *post*. By s. 4 of that Act costs in the case of offences committed or supposed to have been committed in a county borough, whether the court directing the payment is held in the borough or not, are payable out of the borough fund or borough rate of the county borough, and costs in the case of offences committed elsewhere are payable out of the county fund of the administrative county in which the offence is committed or is supposed to have been committed. This provision applies to the costs of any indictable offence, and the court is empowered to direct the payment of the costs of the prosecution or defence or both out of the funds of the county borough or the county, as the case may be (s. 1). Provision is made for an adjustment for the purpose of meeting any change in the financial relations between any counties and boroughs which may arise (s. 4 (4)).

In the larger quarter sessions boroughs with a population of 10,000 or upwards the provisions of this section were superseded by s. 35 (5) of the Local Government Act, 1888, *post*, which made the costs of the prosecutions mentioned in this section payable out of the county fund, and made such boroughs liable to contribute towards the costs of assizes and sessions as defined by s. 100 of that Act. The effect of the Act of 1908 is to put all quarter sessions boroughs upon the same footing in respect of such costs, and to extend their liability so as to make them contribute towards the costs of prosecutions at assizes in the case of prisoners who have not been committed for trial from the borough, See the note to s. 100 of the Local Government Act, 1888, *post*, p. 452.

Sheriff.

Appointment of sheriff in counties of cities and counties of towns.

170.—(1.) The council of every borough being a county of itself, and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff.

(2.) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

(3.) The sheriff shall hold office until the appointment of his successor.

(4.) He shall have the same duties and powers as the sheriff or the person filling the office of sheriff in the respective borough or city would have had if this Act had not been passed.

Counties corporate are certain cities or towns to which out of special grace and favour the Kings of England have granted the privilege to be counties of themselves and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Blackstone, Comm. (21st edition), i. 120.

Any town or city might be constituted a county of itself by royal charter, and thereby exempted from the jurisdiction of the sheriff of the county wherein it was situate, provided that a sheriff or sheriffs of such county of a city or county of a town were constituted at the same time. *The Gloucester Case*, Popham, 16. The places which are counties of themselves were set out in s. 61 of the Act of 1835 as follows: the city of Oxford; the town of Berwick-upon-Tweed; the counties of the cities of Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, and York; and the counties of the towns of Caermarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton. As to Berwick-upon-Tweed, see 6 & 7 Will. 4, c. 103, s. 6. Coventry has since ceased to be a county. See 5 & 6 Vict. c. 110.

Boroughs with a population of 50,000, and boroughs which are counties of themselves, have been constituted county boroughs by s. 31 of the Local Government Act, 1888, *post*, p. 420. A county borough is an administrative county of itself for the purposes of that Act, but is not necessarily a county of itself within the meaning of this section.

The office of sheriff is not an office or place of profit in the gift or disposal of the council so as to disqualify the holder for being a member of the council under s. 12, *ante*. An officer of the regular forces on the active list cannot be appointed sheriff, but an officer of the auxiliary forces is not disqualified. 44 & 45 Vict. c. 58, ss. 146, 181. As to the powers and duties of sheriffs, see the Sheriffs Act, 1887 (50 & 51 Vict. c. 55).

Coroner.

Appointment, fees, &c., of borough coroner in boroughs having separate quarter sessions.

171.—(1.) The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough; [*and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner*] (*a*).

(2.) The coroner shall hold office during good behaviour.

(3.) A vacancy in the office shall be filled up within ten days after it occurs.

(4.) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules (*b*).

(*a*) Boroughs which have not a separate court of quarter sessions are subject to the jurisdiction of the county coroner, who is appointed by the county council under s. 5 of the Local Government Act, 1888. Where, however, the district of a county coroner is wholly situate within a county borough which has not a separate court of quarter sessions, the appointment is to be made by the council of that borough; and

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where his district is partly within and partly without a county borough, the county council are to appoint the person recommended by a joint committee of the county and borough councils. Local Government Act, 1888, s. 34 (4), (5), *post*, p. 425.

In the smaller quarter sessions boroughs with a population under 10,000 in 1881, the powers and duties of the council as regards coroners have been transferred to the county council by s. 38 (2) of the Local Government Act, 1888, *post*, p. 432.

Where a borough council appointed a coroner, after the grant of a separate court of quarter sessions had been made, but before it had passed the Great Seal, it was held that the appointment, even if it was originally informal, had been made valid by the fact that the council had after the receipt of the grant recognized the person appointed as coroner. *Reg.* v. *Grimshaw*, (1847) 10 Q. B. 747; 16 L. J. Q. B. 385; 11 Jur. 965.

No particular qualification is prescribed by this section for the office of coroner, and the qualification by the ownership of land which is required by s. 12 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), in the case of a county coroner is not made applicable to a borough coroner. See s. 33 of that Act. The office of coroner is not incompatible with that of justice of the peace. *Davis* v. *Justices of Pembrokeshire*, (1881) 7 Q. B. D. 513.

The last clause of sub-s. (1), from "and thereafter," has been repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71). See now s. 7 (2) of that Act, which provides that in a borough with a separate court of quarter sessions no coroner, save as is otherwise provided by that Act, shall hold an inquest belonging to the office of coroner, except the coroner of the borough or a coroner or deputy coroner for the jurisdiction of the Admiralty of England. The power of the Admiralty to appoint coroners within their jurisdiction is preserved by s. 255, *post*.

(*b*) In accordance with this provision, which is taken from the Act of 1835, the coroner lays his account at each quarter session before the recorder, who, in the great majority of instances, is wholly ignorant of the matters upon which he makes his order, and has little opportunity of examining or ascertaining whether the inquests have been "duly taken," or otherwise, that is to say, whether they ought to have been held. See *Reg.* v. *Gloucestershire Justices*, (1857) 7 E. & B. 805; 27 L. J. M. C. 15; 29 L. T. (O. S.) 180; 5 W. R. 655.

The court of quarter sessions in counties, being differently constituted from that in boroughs, which consists now of the recorder alone, can exercise a sufficient superintendence over such matters, on which they have the sole power of deciding. Thus, where the court of quarter sessions had refused to allow a coroner's charge for a particular inquest, considering that it had been unnecessarily taken, there being no ground for supposing that the deceased had died any other than a natural death, though the death had been sudden, the Court of King's Bench refused an application for a *mandamus*, the question being one for the judgment of the court of quarter sessions. *Rex* v. *Justices of Kent*, (1809) 11 East, 229. It would perhaps have been better, in the case of boroughs, had the order been directed to have been signed by the mayor, after an examination of the accounts, &c., by him and the council, or by some smaller number of persons.

A borough coroner is entitled to a further fee of 6*s*. 8*d*. for each inquest under s. 27 of the Coroners Act, 1887 (50 & 51 Vict. c. 71).

Power of borough coroner to appoint a deputy.

172.—[(1.) *In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise.*

(2.) *The mayor or two justices for the borough shall on each occasion certify by writing signed by him or them the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.*]

This section has been repealed by the Coroners Act, 1892 (55 & 56 Vict. c. 56), and is replaced by s. 1 of that Act, which provides as follows:—

"1.—(1.) Every coroner, whether for a county or a borough, shall appoint, by

writing under his hand, a fit person approved by the chairman or mayor, as the case may be, of the council who appointed the coroner, not being an alderman or councillor of such council, to be his deputy, and may revoke such appointment, but such revocation shall not take effect until the appointment of another deputy has been approved as aforesaid.

"(2.) A duplicate of every appointment shall be sent to the said council and be kept among the records of the county or borough, as the case may be.

"(3.) A deputy may act for the coroner during his illness or during his absence for any lawful or reasonable cause, or at any inquest which the coroner is disqualified for holding, but not otherwise. In the case of a borough coroner the necessity of his so acting shall be certified on each occasion by a justice of the peace, and such certificate shall state the cause of absence of the coroner, be openly read to every inquest jury summoned by the deputy coroner, and be conclusive evidence of the jurisdiction of the deputy to act.

"(4.) The deputy of a coroner shall, notwithstanding the coroner vacates his office by death or otherwise, continue in office until a new deputy is appointed, and shall act as the coroner while the office is so vacant in like manner as during the illness of the coroner, and one certificate may extend to the period of the vacancy, and he shall be entitled to receive in respect of the period of the vacancy the like remuneration as the vacating coroner.

"(5.) For the purpose of an inquest or act which a deputy of a coroner is authorized to hold or do, he shall be deemed to be that coroner, and have the same jurisdiction and powers and be subject to the same obligations, liabilities, and disqualifications as that coroner, and he shall generally be subject to the provisions of the Coroners Act, 1887, and to the law relating to coroners in like manner as that coroner.

"(6.) A council may postpone the appointment of a coroner to fill a vacancy, either generally or in any particular case, for a period not exceeding three months from the date at which that vacancy occurs.

"(7.) For the purposes of this section the council who appointed a coroner shall—

"(a) where the coroner was, in pursuance of any section of the Local Government Act, 1888, appointed by or on the recommendation of a joint committee, be deemed to be any of the councils who appointed any members of that committee; and

"(b) where a coroner for a district of a county is, in pursuance of sub-section four of section thirty-four of the Local Government Act, 1888, appointed by the council of any county borough, be deemed to be that council.

"(8.) In the case of a county coroner who has been elected before the date on which the provisions of the Local Government Act, 1888, as to the appointment of coroners came into force, the council of any county or county borough, in which the district of the coroner is wholly or partially situated, shall for the purposes of this section be deemed to be the council who appointed the coroner."

Returns by borough coroners.

173. [*On or before the first of February in every year the coroner shall send to the Secretary of State a return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was called upon to hold an inquest during the year ending on the then last thirty-first of December.*]

This section has been repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71), and is replaced by s. 28 of that Act, which requires every coroner of a borough to make an annual return on or before the 1st of February of all cases in which an inquest has been held by him, or by some person in lieu of him, during the year ending on the 31st of December immediately preceding.

Acting of county coroner in borough.

174.—[(1.) *Where a borough has not a separate court of quarter sessions, no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner.*

(2.) *That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed*

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This section has been repealed by s. 45 of the Coroners Act, 1887 (50 & 51 Vict. c. 71). Section 7 (3) of that Act provides that in a borough which has not a separate court of quarter sessions, no coroner, save as is otherwise provided by that Act, shall hold an inquest belonging to the office of coroner, except a coroner for the county, or a coroner or a deputy coroner for the jurisdiction of the Admiralty of England; and s. 43 provides that nothing in that Act shall affect the law respecting the salaries of coroners for counties, as to which see 23 & 24 Vict. c. 116, s. 4.

Borough Civil Court (a).

Judge of borough civil court where there is a recorder.

175.—(1.) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court.

(2.) The recorder, if judge, may, in case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise (*b*).

(3.) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.

(4.) A court shall not be illegal, nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.

(5.) The recorder, where judge, and the deputy judge, shall have such remuneration as the council fix by byelaw (*c*).

(6.) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years standing or a solicitor of five years practice, from time to time appointed for that purpose by the recorder by writing signed by him.

(7.) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years standing, or a solicitor of five years practice, as the recorder appoints by writing signed by him.

(*a*) The expression "borough civil court" is defined by s. 7, *ante*, as meaning an inferior court of record for the trial of civil actions which by charter, custom, or otherwise is or ought to be holden in a borough. It does not include a county court. The most important of these local courts are the Mayor's Court, London (regulated by 20 & 21 Vict. c. clvii.), the Liverpool Court of Passage (regulated by 16 & 17 Vict. c. xxi. and 59 & 60 Vict. c. 21, and as to its Admiralty jurisdiction, by 31 & 32 Vict. c. 71, s. 25), the Salford Hundred Court of Record (regulated by 31 & 32 Vict. c. cxxx.), and the Oxford University Chancellor's Court (regulated by 25 & 26 Vict. c. 26).

There are other inferior courts of record which have no special Acts governing

their procedure, *e.g.*, the Bristol Tolzey and Pie Poudre Court, the Derby Court of Record, the Preston Court of Pleas, &c. As to the power of such courts to make rules for regulating their procedure, see *Fellowes* v. *Owners of the "Lord Stanley,"* [1893] 1 Q. B. 98; 67 L. T. 857; 41 W. R. 253; 9 T. L. R. 79.

Any of the provisions of the Judicature Acts or of the Rules of Court made thereunder may be extended to any of these courts by Order in Council under s. 8 of the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49); and by s. 24 of the Judicature Act, 1884 (47 & 48 Vict. c. 61), any rules made by such courts after the commencement of that Act are to be subject to the concurrence of the Rule Committee of the judges of the Supreme Court, who are empowered to alter or annul any existing rule. In cases where there is no special Act regulating the procedure, an appeal may be brought from an inferior court of record to the King's Bench Division of the High Court under O. 59, rr. 10—17. *Darlow* v. *Shuttleworth*, [1902] 1 K. B. 721; 71 L. J. K. B. 460; 86 L. T. 524; 50 W. R. 668; 66 J. P. 516; 18 T. L. R. 419.

Where the power to hold a borough court civil had been granted by charter, a *mandamus* was granted directing the court to be held, although the court had been disused for very many years and the objection was made that there were not sufficient funds for the purpose. *R.* v. *Mayor of Hastings*, (1822) 1 D. & R. 148; 5 B. & Ald. 692, *n.*; 24 R. R. 657; *R.* v. *Mayor of Wells*, (1836) 4 Dowl. P. C. 562.

(*b*) As to the appointment of a deputy judge, see also 35 & 36 Vict. c. 86, s. 7, *post*, p. 279; and as to the power to make such appointment where the recorder is incapable of making it, see the note to s. 166, *ante*.

(*c*) As to the right of the judge to recover arrears of his salary, see *Addison* v. *Mayor of Preston*, *ante*, p. 121.

Judge of borough civil court where there is no recorder.

176. Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer.

Tenure of judge.

177. Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

Registrar and other officers and fees.

178.—(1.) Except where the town clerk acts as registrar, the council shall from time to time appoint a registrar of the borough civil court.

(2.) The council shall from time to time appoint other requisite officers and servants of the court.

(3.) The fees to be taken by the registrar and other officers of the court shall be from time to time fixed by the council, subject to the approval of the Secretary of State.

(4.) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835.

In the case of a local court to which the Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), has been applied, the fees are fixed by the judge under rule 3 of the schedule to that Act, *post*, p. 280. A copy of the table of fees fixed under this section must be posted in the manner directed by s. 234, *post*.

Solicitors.

179.—(1.) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court.

(2.) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

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Time of holding court.

180.—(1.) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts.

(2.) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs.

Procedure.

181. Every personal action brought in a borough civil court shall be commenced by writ of summons.

Power for judge to make rules of procedure.

182.—(1.) Subject to the provisions of this Act, the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by any rule revoke or alter any former rule.

(2.) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.

(3.) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

Rules made under this section are now subject to the concurrence of the Rule Committee which is empowered to make rules for the Supreme Court. Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 24.

Jurisdiction of court.

183.—(1.) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder is judge, or wherein a barrister of five years' standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

(2.) Any action wherein the title to land of any tenure, or to any tithe, toll, market, fair, or other franchise is in question shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

Saving for borough civil courts and for 35 & 36 Vict. c. 86.

184.—(1.) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge, or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed.

(2.) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872.

The Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), is set out *post*, p. 278. The business of the borough civil courts has now to a great extent been transferred to the county courts. By s. 117 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), where an action which might have been brought in a county court is brought in a borough civil court, and the plaintiff recovers less than ten pounds, he is only entitled to county court costs.

Power to extend jurisdiction of borough civil court.

185. It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions; and the same shall extend accordingly.

Borough Juries.

Provisions as to juries in boroughs.

186.—(1.) Every burgess of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt or disqualified, be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.

(2.) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, summon a sufficient number of persons, qualified and liable, to serve as grand jurors at the sessions.

(3.) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number of persons, qualified and liable, to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.

(4.) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.

(5.) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

(6.) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.

(7.) If any person, having been duly summoned under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court) be liable to pay a fine of such amount as the court thinks fit.

(8.) If the person on whom any such fine is imposed refuses to pay it to the person authorized by the court to receive it, the court may, then or at the next sitting, by order of the court signed by the clerk of the

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peace or registrar, cause to be levied, by distress and sale of the goods of the person on whom the fine is imposed, the fine and the reasonable charges of the distress and sale.

33 & 34 Vict. c. 77.

(9.) Nothing in this Act shall affect the Juries Act, 1870.

For a list of the persons exempt from serving on juries, see the schedule to the Juries Act, 1870 (33 & 34 Vict. c. 77), and 39 & 40 Vict. c. 36, s. 9. By the schedule to the former Act members of the town council of a borough, the borough justices, and the town clerk and treasurer of the borough, are exempt from service on any jury summoned to serve in the county in which the borough is situate; burgesses of a quarter sessions borough are exempt from service on a jury at the quarter sessions held for the county in which the borough is situate; and a justice of the peace is exempt from serving on any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice.

The following persons are disqualified by ss. 8 and 10 of the Juries Act, 1870, for service on any jury: aliens (except as provided in s. 8); persons attainted of any treason or felony, or convicted of any crime that is infamous, unless they have obtained a free pardon; and any man who is under outlawry.

As to jurors in the Cinque Ports, see s. 248 (6), *post*.

Exceptional Provisions.

Grants to boroughs not affected by subsequent grants to counties.

187. The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission.

See ss. 156 and 162, *ante*.

Trial of offences committed in counties of cities and counties of towns.

188.—(1.) Until Her Majesty is pleased to direct a commission of oyer or terminer and gaol delivery to be executed within any borough being a county of a city or county of a town, all bills of indictment for offences committed within that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorized by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, "to regulate the trial of causes, indictments, and other proceedings which arise within the counties of certain cities and towns corporate within the kingdom."

(2.) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.

For a list of boroughs which are counties of themselves, see the note to s. 170, *ante*.

Sections 1 and 2 of the Act 38 George 3, c. 52, are as follows:—

"1. Whereas there at present exists in the counties of cities and of towns corporate within this kingdom, an exclusive right that all causes and offences which arise within their particular limits should be tried by a jury of persons residing within the limits of the county of such city or town corporate; which ancient privilege, intended for other and good purposes, has in many instances been found by experience not to conduce to the ends of justice: And whereas it will tend to the more effectual administration of justice, in certain cases, if actions, indictments, and other proceedings, the causes of which arise within the counties of cities and towns corporate, were tried in the next adjoining counties: In order, therefore, to remedy this mischief for the future, be it enacted that from and after the passing of this Act, in every action, whether the same be transitory or local, which shall be prosecuted or depending in any of His Majesty's Courts of record at Westminster, and in every indictment removed into His Majesty's Court of King's Bench by writ of *certiorari*, and in every information filed by His Majesty's Attorney or Solicitor-General, or by the leave of the Court of King's Bench, and in all cases where any person or persons shall plead

to or traverse any of the facts contained in the return to any writ of *mandamus*, if the venue in such action, indictment, or information be laid in the county of any city or town corporate within that part of Great Britain called England, or if such writ of *mandamus* be directed to any person or persons, body politic and corporate, that it shall and may be lawful for the Court in which such action, indictment, information or other proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, indictment, information, or proceeding, to be tried by a jury of the county next adjoining to the county of such city or town corporate, and to award proper writs of *venire* and *distringas* accordingly, if the said Court shall think it fit and proper so to do.

"2. It shall and may be lawful for any prosecutor or prosecutors to prefer his, her, or their bill or bills of indictment, for any offence or offences committed, or charged to be committed, within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate, sworn and charged to inquire for the King for the body of such adjoining county at any sessions of oyer and terminer, or general gaol delivery; and that every such bill of indictment found to be a true bill by such jury shall be valid and effectual in law, as if the same had been found to be a true bill by any jury sworn and charged to inquire for the King for the body of the county of such city or town corporate."

The first of these sections has been repealed, so far as it relates to civil proceedings, by 42 & 43 Vict. c. 59. The jurisdiction of the assizes under that Act has been held not to be affected by the grant of a separate court of quarter sessions to the borough. *Reg.* v. *Holden*, (1838) 8 C. & P. 606.

Jurisdiction in places separated from borough.

189. Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognisable by a justice or by the quarter sessions having jurisdiction within that place shall be cognisable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate, in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.

PART IX.

Police.

[This Part (ss. 190—200) does not apply to county councils.]

Watch Committee; Constables.

Council to appoint watch committee.

190.—(1.) The council shall from time to time appoint, for such time as they think fit, a sufficient number not exceeding one third of their own body, who, with the mayor, shall be the watch committee.

(2.) The watch committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present.

The council are empowered by s. 22, *ante*, to appoint out of their own body such committees as they think fit; but the requirement of that section that the acts of every such committee are to be submitted to the council for their approval does not appear to apply to the watch committee which is appointed under this section.

Where a watch committee resolved that the borough council should not be asked to authorize the chief constable to appear as respondent in an appeal to quarter sessions against the refusal of the licensing justices to renew a publican's licence, it was held by a Divisional Court that a new watch committee which had subsequently come into office had no power to override this resolution and order the costs incurred by the chief constable to be paid. The judgment was affirmed by the Court

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of Appeal and the House of Lords on another ground, but in both of those Courts it was doubted whether the decision of the Divisional Court on this point was right. *Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404; 15 T. L. R. 370.

Appointment, duties, and powers of borough constables.

191.—(1.) The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables (*a*).

(2.) A borough constable shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has and is liable to for the time being in his constablewick, at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act (*b*).

(3.) The watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(4.) The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same (*c*).

(5.) When a borough constable is so dismissed, or ceases to belong to the constabulary force of the borough, all powers vested in him as a constable by virtue of this Act shall immediately cease.

3 & 4 Vict. c. 88.

(6.) Nothing in this section shall interfere with the operation of an Act of the session of the third and fourth years of Her Majesty's reign "to amend the Act for the establishment of county and district constables"; and throughout that Act a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it (*d*).

(*a*) The expenses of the borough police force are payable out of the borough fund on the order of the watch committee, subject to the approbation of the council. See Schedule 5, Part II., Rule 5, *post*, p. 181.

The powers and duties of the council and of the watch committee in relation to the borough police force in boroughs which had a population in 1881 of less than 10,000, whether quarter sessions boroughs or not, have been transferred to the standing joint committee by s. 39 (1) of the Local Government Act, 1888, *post*, p. 434, and the borough police force in such boroughs has become part of the county police under s. 118 (16) of that Act. By s. 215, *post*, the establishment of a separate police force in a newly-created borough is prohibited where the population is less than 20,000.

There are a number of boroughs with a population exceeding 10,000 which have not established separate police forces of their own, but are watched by the county police. Among these are included the county boroughs of Burton-upon-Trent, Bury, Dudley, Gloucester, and West Bromwich. See Parliamentary Papers, 1897, C. 207.

Boroughs within the metropolitan police district (*e.g.*, Croydon, Richmond, and West Ham) have no separate police force.

The provisions of the following Police Acts which relate to the borough police are set out in Part II., *post*; 3 & 4 Vict. c. 88 (p. 215); 19 & 20 Vict. c. 69 (p. 241); 22 & 23 Vict. c. 32 (p. 245); 53 & 54 Vict. c. 45 (p. 486); 55 & 56 Vict. c. 38 (p. 521); 56 & 57 Vict. c. 6 (p. 528); 56 & 57 Vict. c. 10 (p. 530); 6 Edw. 7, c. 7 (p. 640); 8 Edw. 7, c. 5 (p. 651); 9 Edw. 7, c. 40 (p. 670). The consolidation of a borough police

force with that of the county is provided for by 3 & 4 Vict. c. 88, s. 14, and 19 & 20 Vict. c. 69, s. 5; and the right of the members of a police force to superannuation allowances is regulated by 53 & 54 Vict. c. 45.

Although the watch committee have power to appoint and dismiss borough constables, the relation of master and servant does not subsist between them and the constables appointed by them and they cannot be made liable for the wrongful acts of such constables. The duties to be performed by police officers are of a public nature and they are in fact a branch of the public administration. *Stanbury* v. *Exeter Corporation*, [1905] 2 K. B. 838; 75 L. J. K. B. 28; 70 J. P. 11; 4 L. G. R. 57; 22 T. L. R. 3, per Lord Alverstone, C.J., and Wills, J.

(*b*) A declaration has been substituted for the oath of a borough constable by 31 & 32 Vict. c. 72, s. 12 (4), *post*, p. 249. See also s. 239 (2), *post*. As to the mode in which the seven miles are to be measured, see s. 231, *post*.

This section does not authorize borough constables to execute unbacked warrants beyond the jurisdiction of the borough justices except in the cases mentioned in s. 223, *post*. *Reg.* v. *Cumpton*, (1880) 5 Q. B. D. 341; 49 L. J. M. C. 41; 42 L. T. 543; 28 W. R. 539; 44 J. P. 489.

(*c*) A borough constable may also be dismissed on summary conviction for neglect of duty or disobedience to a lawful order under s. 194. The power of the watch committee to dismiss a borough constable is not affected by the Police Act, 1890 (53 & 54 Vict. c. 45). See s. 10 of that Act, *post*, p. 493.

See also 22 & 23 Vict. c. 32, s. 26, *post*, p. 246, as to the power of the watch committee to suspend a constable, or to fine him, or to reduce him in rank. Where the borough police force has been consolidated with the county police, the power to dismiss a borough constable is vested in the chief constable of the county. 3 & 4 Vict. c. 88, s. 15, *post*, p. 216.

(*d*) The provisions of the Act 3 & 4 Vict. c. 88 which relate to the borough police are set out *post*, p. 215.

Quarterly returns as to borough constables.

192. The watch committee shall, on the first of January, the first of April, the first of July, and the first of October in every year, send to the Secretary of State a copy of all rules from time to time made by the watch committee or the council for the regulation and guidance of the borough constables.

Power for constables to apprehend disorderly persons, &c.

193. A borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch-house, in order that he may either be secured until he can be brought before a justice, or, where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice.

As to the power of borough constables to take bail, see s. 227.

Penalties on constables for neglect of duty.

194. If a borough constable is guilty of neglect of duty, or of disobedience to a lawful order, he shall for every such offence be liable on summary conviction to imprisonment for any time not exceeding ten days, or, in the discretion of the court, to a fine not exceeding forty shillings, or to be dismissed from his office.

As to the liability of a borough constable to dismissal, see also s. 191 (4), *ante*, and the notes thereto.

Penalty for assaults on constables.

195.—(1.) If any person assaults or resists a borough constable in the execution of his duty, or aids or incites any person so to assault or resist, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.

(2.) But nothing in this section shall prevent any prosecution by

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way of indictment against any such offender, except that he shall not be prosecuted both by indictment and in a summary manner for the same offence.

Assaults on constables in the execution of their duty are also punishable under 10 & 11 Vict. c. 89, s. 20, and 34 & 35 Vict. c. 112, s. 12. See 46 & 47 Vict. c. 44, s. 2, *post*, p. 352, which provides that nothing in s. 195 of this Act shall be taken to have repealed either of these sections of the earlier Acts. As to indictments for such assaults, see 24 & 25 Vict. c. 100, s. 38. Fines for assaults on constables are carried to the pension fund of the police force under s. 16 of the Police Act, 1890 (53 & 54 Vict. c. 45), *post*, p. 495.

Special Constables.

Appointment of special constables. 1 & 2 Will. 4, c. 41.

196.—(1.) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough (*a*).

(2.) Every such special constable shall make a declaration to the effect of the oath set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, "for amending the laws relative to the appointment of special constables, and for the better preservation of the peace," and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act (*b*).

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

(4.) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules.

(*a*) As to the classes of persons who are exempt from serving the office of constable or are disqualified, see 5 & 6 Vict. c. 109. ss. 6 and 7; 13 & 14 Vict. c. 20, s. 5. Further exemptions have been enacted in various cases by later Acts. This section does not supersede 1 & 2 Will. 4, c. 41, which authorizes the justices to appoint special constables in case of actual or apprehended tumult, riot, or felony. *Reg.* v. *Hulton*, (1849) 13 Q. B. 592; 19 L. J. M. C. 32; 13 Jur. 1093. As to the power to employ county constables in a borough in case of emergency, see 22 & 23 Vict. c. 32, s. 2, *post*, p. 245.

(*b*) The oath referred to is in the following form: "I, A. B., do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable for the parish of ———, without favour or affection, malice or ill-will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God." A declaration has now been substituted for the oath by 31 & 32 Vict. c. 72, s. 12 (4), *post*, p. 249.

Any one who refuses to serve or to obey orders is liable to a penalty not exceeding £5 (1 & 2 Will. 4, c. 41, s. 8). A person appointed under the Act has all the powers and is liable to all the duties of a duly appointed constable (s. 5).

Watch Rate.

Levy of watch rate.

197.—(1.) Where at the commencement of this Act any rate might be levied in a borough, or in any part of a borough, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, the council may from time to time make and levy a watch rate on the occupiers of all hereditaments within such parts of the borough as are watched by day and by night, and as are from time to time, by order of the council, declared liable to watch rate (*a*).

(2.) The watch rate shall be made on an estimate of the net annual value of the several hereditaments rated thereto, that is to say, of the rent at which, one year with another, they might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses necessary to maintain them in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rent-charge (if any), being paid by the tenant.

(3.) The watch rate may be made by one rate made yearly, or by two or more rates made half-yearly or otherwise, and may be of any amount in the discretion of the council, not exceeding in any year eightpence in the pound on the net annual value of the hereditaments rated thereto.

(4.) For the purposes of the watch rate the council and all persons concerned, including overseers, shall have all powers given to them in respect of the borough rate for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case admits (*b*).

(5.) The provision of this Act relating to orders of vestries for the rating, in some cases, of owners instead of occupiers, shall extend to the watch rate (*c*).

(6.) Nothing in the foregoing provisions of this section (except the general power to levy a watch rate) shall apply to any borough in which the borough fund is sufficient with the aid of the amount only of watch rate which could for the time being be raised therein under the Municipal Corporations Act, 1835, and without the aid of any borough rate, to defray the expenses of the constabulary force of the borough, with all other expenses legally payable out of the borough fund; but nothing in the present provision shall affect any benefit or right reserved by Part X., or make the borough fund liable to any expenses with which it would not be otherwise chargeable (*d*).

(7.) Nothing in this section shall affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police.

(8.) Nothing in this section shall make liable to watch rate any hereditaments exempted by any local Act from payment of watch rate (*e*).

(9.) Nothing in this section shall alter the comparative liability to watch rate of any hereditaments which are under any local Act in respect of any watch rate entitled to any deduction from, or chargeable with any increase on, an equal pound rate; but the like comparative deductions and increased charges shall be made under this section.

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(*a*) This section only authorizes the making of a watch rate in cases where the power to make such a rate existed at the time when the Act was passed. The councils of any of the boroughs named in the schedules to the Act of 1835 were empowered by 2 & 3 Vict. c. 28, s. 1 (which is repealed by this Act), to levy a watch rate upon those parts of the borough which were watched by day and by night, and which were declared liable to such watch rate by order of the council. See *Great Western Railway Co.* v. *Town Council of Maidenhead*, (1862) 11 C. B. (N. S.) 653; 31 L. J. M. C. 113. In other cases the expenses of the borough constabulary force are payable out of the borough fund under Schedule 5, Part II., Rule 5, *post*.

(*b*) See ss. 144 and 145, *ante*. Where the watch rate was levied by means of a warrant issued by the mayor to the overseers of the parish, it was held that the watch rate was a rate made by the corporation within the meaning of a local Act. *North Eastern Railway Co.* v. *Sutton Overseers*, (1886) 51 J. P. 165.

(*c*) See s. 147, *ante*.

(*d*) Part X. of this Act (ss. 201—209) relates to freemen. As to the application of the borough fund, see s. 140 and the notes thereto.

(*e*) See *Hallett* v. *Churchwardens of Brighton*, (1857) 7 E. & B. 342; 26 L. J. M. C. 61; 3 Jur. (N. S.) 237; 28 L. T. (O. S.) 248; 5 W. R. 198.

Watch rate in divided parish.

198.—(1.) Where part only of a parish is liable to watch rate, the overseers shall not pay out of the poor rate the amount of the watch rate charged by the council on that parish, but shall make a separate rate or assessment on the part or parts only of the parish liable to watch rate; which rate shall be made in like manner and under like regulations and with like means and remedies for recovery thereof as in the case of a rate levied in respect of the contribution towards a borough rate (*a*).

(2.) No such separate rate shall be demanded, collected, or payable until it has been allowed by two justices usually acting in and for the borough and has been published, as a poor rate is by law required to be allowed and published (*b*).

(3.) Any person who thinks himself aggrieved by such a separate rate may appeal to the recorder at the next quarter sessions for the borough, or if there is none to the next court of quarter sessions for the county wherein the borough is situate, or whereto it is adjacent; and the recorder or court shall hear and determine the same, and shall award relief in the premises as in cases of appeal against a poor rate (*c*).

(4.) Every such separate rate may be of the rate in the pound necessary for raising the sum charged by the council, but not exceeding twopence in the pound beyond the rate in the pound at which the council have computed the watch rate charged by them.

(5.) The overseers shall account for money collected under such a separate rate as for money collected under a poor rate; and if there is a surplus in their hands, they shall pay it to the treasurer, to go to the borough fund, to the credit of the place for which the rate was made, and in part payment of the next watch laid on that place by the council.

(6.) The council or a committee appointed for this purpose, on application on behalf of any person rated to such a separate rate to be discharged therefrom, and on proof of his inability through poverty to pay the amount charged on him, may order that he be excused from the payment thereof, and may strike out his name therefrom; and the sum at which he was rated shall not thereafter be collected, nor shall any person be charged with it or be liable to account for it or for omitting to collect or receive it.

(7.) The overseers making any such separate rate may, by warrant from two justices usually acting in and for the borough, levy on every person refusing to pay the rate the amount charged on him, with the costs and charges of recovering and enforcing payment thereof, to be ascertained by the justices, by distress and sale of the offender's goods, rendering to him the overplus; and in default of such distress two justices may commit him to prison, there to remain without bail until payment of the amount and arrearages (*d*).

(*a*) See s. 146, *ante*.

(*b*) A poor rate must be allowed in writing by two justices. 43 Eliz. c. 2, s. 1; 12 & 13 Vict. c. 64. It must be published by notice fixed on or near the church doors in the manner prescribed by 17 Geo. 2, c. 3, s. 1, and 1 & 2 Vict. c. 45, s. 2.

(*c*) An appeal may be made against a poor rate to quarter sessions under s. 4 of the Poor Relief Act, 1743 (17 Geo. 2, c. 38). By ss. 1 and 8 of the Poor Rate Act, 1801 (41 Geo. 3, c. 23), the court is empowered to amend or quash the rate, and to order the repayment of any sum which the appellant ought not to have been charged with. The procedure on such appeals is regulated by the Union Assessment Committee Acts, 1862 and 1864 (25 & 26 Vict. c. 103, and 27 & 28 Vict. c. 39).

(*d*) A warrant may also be issued by the mayor under s. 199.

Warrant for levy of watch rate.

199. Any warrant required for the levy or collection of a watch rate or separate rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

Such a warrant may also be issued by the justices under ss. 197 (4) and 198 (7).

Watch rate to go to borough fund.

200. All money raised by a watch rate, or by a separate rate as last aforesaid, shall go to the borough fund.

PART X.

Freemen.

[This Part (ss. 201—209) does not apply to County Councils.]

Definition of freeman.

201. In this Part the term freeman includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of freemen or of burgesses.

See s. 2 of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), *post*, p. 211. Before the passing of that Act the right to admission as a freeman depended upon the custom of the particular borough, subject to any provisions on the subject contained in its charter. See *R.* v. *Salway*, (1829) 9 B. & C. 424; 4 Man. & Ry. 314; 7 L. J. (O. S.) K. B. 277; 33 R. R. 230. The right to admission could be founded on birth, servitude, marriage, gift, or purchase. The Act of 1835 preserved existing customs as they were, but prohibited the admission of freemen by gift or purchase; and now by s. 205 of the present Act every person who if the Act of 1835 had not been passed might have been admitted otherwise than by gift or purchase, and every person who for the time being is (a) an inhabitant of a borough; or (b) wife, widow, son or daughter of a freeman; or (c) husband of a daughter or widow of a freeman; or (d) bound an apprentice, is entitled to be admitted as a freeman and to share in the benefit of the corporate property, and to vote as such in a parliamentary election (s. 209).

Before the Act of 1835 was passed, the freemen were an integral part of the corporation, but the effect of that Act was to make the corporation a distinct body and to vest in them the corporate property, subject, however, to the rights which the freemen had theretofore enjoyed in respect of such property. See *Mayor of Lincoln* v. *Holmes*

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Common, (1867) L. R. 2 Q. B. 482; 36 L. J. M. C. 73; 8 B. & S. 344; 16 L. T. (N. S.) 739; 15 W. R. 786; 31 J. P. 645.

An exception to the rule that admission may not be obtained by gift is made by the Honorary Freedom of Boroughs Act, 1885 (48 & 49 Vict. c. 29), *post*, p. 407, which enables the council of a borough to admit to be honorary freemen of the borough persons of distinction and any persons who have rendered eminent services to the borough. Such admission, however, is not to confer the right of voting for the borough at any elections, or of sharing in the benefit of the corporate property. A resolution to grant such honorary freedom must be passed by a majority of not less than two-thirds of the members of the council present and voting at a meeting specially called for the purpose with notice of the object.

Freedom not by gift or purchase.

202. No person shall be admitted a freeman by gift or by purchase.

As to the admission of honorary freemen, see the note to s. 201.

The freemen's roll.

203. The town clerk of every borough for which at the commencement of this Act there is a Freemen's Roll shall continue to keep a list, called the Freemen's Roll.

As to the right to inspect and to have a copy of the Freemen's Roll, see s. 233 (5).

Admission to freedom.

204. Where a person is entitled to be admitted a freeman for the purposes of this Part in respect of birth, servitude, or marriage, and claims accordingly, the mayor shall examine into the claim, and on its being established the claimant shall be admitted and enrolled by the town clerk on the Freemen's Roll.

In order to be entitled to admission in respect of servitude, the claimant must have served under a deed as apprentice to a freeman for the period required by the custom of the borough. *R.* v. *Inman*, (1820) 4 B. & Ald. 55; and see *R.* v. *Rowe*, (1769) 4 Burr. 2287. Where the custom of the borough required apprenticeship for seven years to a trade, it was held that service during that period as clerk to an attorney was not sufficient. *R.* v. *Doncaster*, (1828) 7 B. & C. 630; 1 Man. & Ry. 545; 6 L. J. (O. S.) M. C. 57.

As to the removal of an unqualified person from the roll by *quo warranto*, see *Re Armstrong*, (1856) 25 L. J. Q. B. 238; 2 Jur. (N. S.) 211; 26 L. T. (O. S.) 248.

Reservation of rights of property to freemen and others.

205.—(1.) Every person who had before the passing of the Municipal Corporations Act, 1835, been admitted a freeman, or if that Act had not been passed might have been so admitted otherwise than by gift or purchase, and

(2.) Every person who for the time being is—

(a) An inhabitant of a borough, or

(b) Wife, widow, son, or daughter of a freeman, or

(c) Husband of a daughter or widow of a freeman, or

(d) Bound an apprentice,—

shall, subject to the provisions of this Part, have and enjoy and be entitled to acquire and enjoy the same share and benefit of the hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any property held in whole or in part for any charitable uses or trusts, as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

Where certain lands had been allotted by an Inclosure Act in 1762 to a corporation, who were empowered to lease them on such terms as the burgesses thought proper, and a byelaw had been made by the corporation directing that the lands should be let and the rents should be paid to the twelve senior burgesses, it was held that the effect of s. 2 of the Municipal Corporations Act, 1835, was to give such

burgesses a right of action against the corporation to enforce their rights under the byelaw. *Hopkins* v. *Mayor of Swansea*, (1839) 4 M. & W. 621; 8 L. J. (N. S.) Ex. 121; affirmed 8 M. & W. 901; 51 R. R. 739. See also *Mayor of Lincoln* v. *Holmes Common*, *ante*, p. 139.

The resident freemen of a borough had a right of pasturage over a common which was allotted to the corporation by an Inclosure Act. Part of the common having been taken by a railway company, it was held that the then resident freemen were not entitled to have the purchase-money divided between them, but that the proper course was to invest it in land to be held upon the same trusts as the land which had been taken by the railway company. *Nash* v. *Coombs*, (1868) L. R. 6 Eq. 51; 16 W. R. 663 · 32 J. P. 612.

Limit of value and saving as to conditions precedent.

206.—(1.) The total amount to be divided among the persons whose rights are by the last foregoing section reserved shall not exceed the surplus remaining after payment of the interest of all lawful debts chargeable on the property out of which the sums so to be divided have arisen, together with the salaries of municipal officers and all other lawful expenses which, on the fifth of June one thousand eight hundred and thirty-five, were defrayed out of or chargeable on the same.

(2.) Where, if the Municipal Corporations Act, 1835, or this Act, had not been passed, any such person would have been liable by statute, byelaw, charter, or custom, to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant thereof, in consideration of his freedom, or of his or her title to those reserved rights, or there was any condition precedent to any person being entitled to those rights, he or she shall not have any benefit in respect of those rights until he or she has paid that fine, fee, or sum to the treasurer on account of the borough fund, or has fulfilled that condition, as far as it is capable of being fulfilled according to the provisions of this Act.

Saving for power to question right.

207. Nothing in this Act shall strengthen or confirm any claim, right, or title of any freeman or of any person to the benefit of any right in this Part reserved, but the same may in every case be brought in question, impeached, and set aside, as if this Act had not been passed.

Reservation of beneficial exemptions to freemen and others.

208.—(1.) Nothing before in this Part contained shall apply to any claim, right, or title of a freeman or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or for the use or benefit of any borough or body corporate.

(2.) No person shall have any such discharge or exemption except a person who, on the fifth of June one thousand eight hundred and thirty-five, was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son, or daughter of a freeman, or was bound an apprentice; and every such person shall be entitled to the same discharge or exemption as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

(3.) But nothing in this Act shall affect the right of any person claiming such discharge or exemption otherwise than as inhabitant or freeman, or member of a municipal corporation, or widow or kin of such an inhabitant, freeman, or member.

Reservation of parliamentary franchise, &c.

209.—(1.) Every person who, if the Municipal Corporations Act, 1835, had not been passed, would have enjoyed as a freeman, or might thereafter have acquired, in respect of birth or servitude, as a freeman,

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the right of voting in a parliamentary election, shall be entitled to enjoy or acquire that right as if that Act or this Act had not been passed (*a*).

(2.) No stamp duty shall be chargeable on the admission of any person as a freeman in respect of birth or servitude in a parliamentary borough (*b*).

(3.) The town clerk shall do all things appertaining by law to the registration of freemen for parliamentary elections.

(*a*) Section 32 of the Reform Act, 1832 (2 & 3 Will. 4, c. 45), preserved the right of freemen to vote at parliamentary elections if duly registered, but excluded freemen admitted otherwise than in respect of birth or servitude since March 1st, 1831, and provided that no person should be entitled to be registered in respect of birth unless his right was originally derived from or through some person who was a burgess or freeman or entitled to be admitted as such before March 1st, 1831, or who had become a burgess or freeman in respect of servitude since that date. This franchise has not been interfered with by 30 & 31 Vict. c. 102. See s. 56 of that Act.

(*b*) As to stamp duty, see the Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 18, 19, and Schedule 1.

PART XI.

GRANT OF CHARTERS (*a*).

[This Part (ss. 210—218) does not apply to county councils.]

Power to Crown in granting charter to borough to extend to it the provisions of the Municipal Corporations Acts.

210. If on the petition to the Queen of the inhabitant householders of any town or towns or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, Her Majesty, by the advice of Her Privy Council, thinks fit by charter to create such town, towns, or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for Her Majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporations Acts (*b*).

(*a*) The power of granting charters is one of the prerogatives of the Crown, and no town or district is entitled to claim such a grant as of right. On the other hand, there are no statutory requirements as to area, population, or rateable value which are a condition precedent to the grant of a charter.

The provisions contained in Part XI. do not affect the royal prerogative in any way, but enable the Crown when exercising such prerogative to extend to a newly-created borough the provisions of the Municipal Corporations Acts, including the power to levy a borough rate, which could not otherwise be made applicable to such boroughs. See *Rutter* v. *Chapman*, (1841) 8 M. & W. 1.

The expression "England" in an Act of Parliament includes Wales and Berwick-upon-Tweed. 20 Geo. 2, c. 42, s. 3.

It may be useful to call attention here to some of the chief differences between a district which is governed by an urban district council and one which has been incorporated under this Act. As regards the constitution of the governing bodies, a district council has no members corresponding to the aldermen, whose term of office is twice as long as that of the ordinary members of a town council. The most important of the powers which may be exercised by the council of a borough under the Municipal Corporations Acts, and which are beyond the reach of an urban district council, are the right of maintaining a separate police force and of having a separate commission of the peace and a separate court of quarter sessions, and the power of

making byelaws for the good rule and government of the borough and the suppression of nuisances. Another important distinction exists with respect to the audit of accounts. In the case of a municipal corporation the whole of the council's accounts, except those which relate to education, but including those which relate to their duties under the Public Health Acts, are audited by auditors appointed by the mayor and the burgesses, and are free from the control of the district auditors appointed by the Local Government Board, whose duty it is to disallow any item in the expenditure of an urban district council which in their opinion cannot be legally justified. Lastly, the dignity which attaches to the title of a municipal corporation and its members is not without effect in attracting persons who would otherwise be unwilling to undertake the responsibilities of local government.

(*b*) The provisions of the Municipal Corporations Acts apply only to boroughs to which they have been made applicable by statute or by charter under this section. See the note to s. 6, *ante*. The power of the Crown to extend the provisions of those Acts to a newly-created borough can only be exercised under this section by the advice of the Privy Council and on the petition of some at least of the inhabitant householders. A compound householder is qualified to petition by 32 & 33 Vict. c. 41, s. 19; 41 & 42 Vict. c. 26, s. 14; and 42 & 43 Vict. c. 10, s. 2, *post*, p. 254. Notice of the petition is required by s. 56 of the Local Government Act, 1888, *post*, p. 439, to be given to the county council of the county in which the town is situate and to the Local Government Board, and any representations made by either of these authorities are to be considered by the Privy Council together with the petition. The validity of a charter which has been accepted by the inhabitants cannot be questioned by any legal proceedings (s. 216).

The expenses of and relating to a charter and all elections, acts, and proceedings under the charter are payable out of the borough fund under Schedule 5, Part II., Rule 10, *post*.

Where an urban district is constituted or included in a borough, all the powers, duties, and property of the local authority under the Public Health Acts are transferred to the council of the borough by s. 310 of the Public Health Act, 1875. See *Hyde Corporation* v. *Bank of England*, (1882) 21 Ch. D. 176; 51 L. J. Ch. 747; 46 L. T. 910; 30 W. R. 790; and see s. 214 (2), *post*.

Reference to Committee of Council, and notice of petition for charter.

211.—(1.) Every petition for a charter under this Act shall be referred to a Committee of the Lords of Her Majesty's Privy Council (in this Part called the Committee of Council).

(2.) One month at least before the petition is taken into consideration by the Committee of Council, notice thereof and of the time when it will be so taken into consideration shall be published in the London Gazette, and otherwise in such manner as the Committee direct for the purpose of making it known to all persons interested.

Power by charter to settle wards, and by fixing dates and otherwise to adapt the Municipal Corporations Acts to first constitution of new borough.

212.—(1.) Where Her Majesty by a charter extends the Municipal Corporations Acts to a municipal borough it shall be lawful for Her Majesty, by the charter, to do all or any of the following things:

(a) To fix the number of councillors, and to fix the number and boundaries of the wards (if any), and to assign the number of councillors to each ward; and

(b) To fix the years days and times for the retirement of the first aldermen and councillors; and

(c) To fix such days times and places, and nominate such persons to perform such duties, and make such other temporary modifications of the Municipal Corporations Acts as may appear to Her Majesty to be necessary or proper for making those Acts applicable in the case of the first constitution of a municipal borough.

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(2.) The years days times and places fixed by the charter, and the persons nominated therein to perform any duties, shall, as regards the borough named in the charter, be respectively substituted in the Municipal Corporations Acts for the years, days, times, places, officers, and persons therein mentioned, and the persons so nominated shall have the like powers, and be subject to the like obligations and penalties, as the officers and persons mentioned in those Acts for whom they are respectively substituted.

(3.) Subject to the provisions of the charter authorized by this section, the Municipal Corporations Acts shall, on the charter coming into effect, apply to the municipal borough to which they are extended by the charter; and, where the first mayor aldermen and councillors or any of them are named in the charter, shall apply as if they were elected under the Municipal Corporations Acts, and, where they are not so named, shall apply to their first election.

Scheme for continuance or abolition of and adjustment of rights of existing local authority and officers.

213.—(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporations Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority (*a*).

(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid (*b*).

(3.) The scheme, when settled by the Committee of Council, shall be published in the London Gazette, and shall not be of any effect unless confirmed as herein-after mentioned.

(4.) Where, within one month after the publication of the scheme in the London Gazette, a petition against it by any local authority affected thereby, or by not less than one twentieth of the owners and ratepayers of the borough (such twentieth to be one twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture) has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of

Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this Part means a sanitary authority, (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts,) also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, [*and not being a school board*], and having powers of local government and of rating for public purposes (*c*).

(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

(*a*) The expression "local authority" is defined by sub-s. (6), *infra*. As to the procedure to be followed in regard to the settling of a scheme, see Schedule 7, *post*. By rule 9 of that schedule the confirmation of a scheme is conclusive as to its validity. A scheme may be amended in the manner provided by s. 218.

(*b*) See also s. 54 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 564, as to the provision to be made for any rural parish affected by the scheme.

(*c*) As to sanitary authorities, see ss. 5 and 6 of the Public Health Act, 1875 (38 & 39 Vict. c. 55); and as to boroughs not subject to the Municipal Corporations Acts, see the notes to s. 6, *ante*.

A school board was made a local authority within the meaning of this section by s. 1 of the School Boards Act, 1885 (48 & 49 Vict. c. 38), which provides as follows:

"(1) The words "and not being a school board" in sub-section (6) of section 213 of the Municipal Corporations Act are hereby repealed:

"A scheme under that section if affecting a school board—

"(a) shall before being settled by the Committee of Council be referred to the consideration of the Education Department; and

"(b) shall not place the new borough under more than one school board; and

"(c) may provide for the continuance of any byelaws in force at the date of the scheme.

"(2) Where within seven years before the passing of this Act a charter has extended the Municipal Corporations Act, 1882, or the Acts thereby consolidated to the municipal borough created by the charter, any scheme relating to a school board which might have been made under the said Acts if this Act had passed at the date of the said charter may be made after the passing of this Act, and Part Eleven of the Municipal Corporations Act, 1882, shall apply accordingly: provided that—

"(a) such scheme may be made on the petition either of the council of the said borough or of the persons who composed the school board, or any of them; and

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"(b) the council of the borough may petition against such scheme in accordance with sub-section 4 of section 213 of the Municipal Corporations Act, 1882; and

"(c) any such scheme may validate any acts done by the Education Department or the school board or the council of the borough or any justice since the date of the charter.

"(3) This section shall be in addition to and not in derogation of any powers in relation to school boards for the time being vested in the Committee of the Lords of the Privy Council on Education (who are in this section referred to as the Education Department)."

References to school boards are now to be construed as references to local education authorities under the Education Act, 1902, Schedule 3, r. (1), *post*, p. 620.

Supplemental provisions as to scheme and charter. 24 & 25 Vict. c. 47.

214.—(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c. Act, 1861, to the Board of Trade (*a*).

(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed (*b*).

(4.) If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly (*c*).

(*a*) If a scheme affects a school board, it must be referred to the Education Department under the School Boards Act, 1885. See note (*c*) to s. 213.

(*b*) The regulations in Schedule 7 prescribe the procedure to be followed when a scheme is settled by the Committee of Council.

(*c*) If the charter is granted, the expenses of and relating to it are payable out of the borough fund under Schedule 5, Part II., Rule 10, *post*.

Provision as to police force in new borough.

215. Nothing in any scheme or in the Municipal Corporations Acts shall authorize the establishment in a borough to which a charter is granted under this Act of a new separate police force not consolidated with the county police force, unless the district incorporated by the charter contained twenty thousand inhabitants or upwards, according to the census taken next before the date of the incorporation.

As to the establishment of a separate police force for a borough, see s. 191, *ante*.

Validity of charters.

216.—(1.) A charter creating a municipal borough which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this Act, shall after acceptance be deemed to be valid and within the powers of this Act and Her Majesty's prerogative and shall not be questioned in any legal proceeding whatever.

(2.) Every such charter shall be laid before both Houses of Parliament within one month after it is granted, if Parliament is then sitting, or if not, within one month after the beginning of the then next sitting of Parliament.

Sub-section (1) of this section removes a difficulty which arose in *Rutter* v. *Chapman*, (1841) 8 M. & W. 1, where a charter had been granted on the petition of some of the inhabitants of a town and a counter-petition was afterwards presented by a larger number against it. As to the necessity for the acceptance of the charter by the inhabitants before it can be made legally binding on them, see 8 M. & W. pp. 36, 85.

A corporation could formerly be dissolved by a surrender of its charter to the Crown; but in the case of corporations to which the provisions of the Municipal Corporations Acts apply, it does not appear that they can be dissolved except by an Act of Parliament, because they derive their existence not merely from their charters, but also from the Municipal Corporations Acts.

Power to settle scheme in case of recent charters.

217. Where a charter was granted to a borough within seven years before the fourteenth of August one thousand eight hundred and seventy-seven, the Committee of Council, on the petition to the Queen of the council of the borough, or of any existing local authority whose district comprises the whole or any part of the area of the borough, either with or without any adjoining or other place, may settle a scheme under this Act in like manner as if the petition for the grant of a charter to the borough had been referred to the Committee of Council after the commencement of this Act, and the provisions of this Act with respect to a scheme shall apply accordingly, with the necessary modifications; and if within one month after the publication of the scheme in the London Gazette a petition against the scheme from the council of the borough has been received by the Committee of Council and is not withdrawn the scheme shall require the confirmation of Parliament.

Power to amend scheme.

218.—(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated (*a*).

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to Her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

(*a*) See ss. 213 and 214, *ante*.

Part XII. Section 219.

PART XII.

LEGAL PROCEEDINGS.

[The whole of this Part (ss. 219—227), except the provisions as to the application of penalties in s. 221, is applied to County Councils by s. 75 of the Local Government Act, 1888.]

Prosecution of offences and recovery of fines.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence (*a*).

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions (*b*).

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court (*c*).

(*a*) That is, calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, *post*, p. 476.

(*b*) It is to be noticed that this section only gives a right of appeal against a conviction. As to appeals to quarter sessions, see s. 31 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which provides that the appeal is to be made to the next practicable court holden not less than fifteen days after the decision was given, and requires the appellant to give notice of appeal within seven days after the decision, and within three days after giving such notice to enter into a recognisance or to give security for the payment of costs.

(*c*) For instance, a penal action against a corporate officer under s. 41, *ante*. See s. 224.

Exclusion of certiorari.

220. A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court.

An order of the council for the payment of money out of the borough fund may be removed by *certiorari* under s. 141, *ante*.

This section does not deprive the High Court of the power to remove any order by *certiorari* on the ground that it was made without jurisdiction. See *Colonial Bank of Australasia* v. *Willan*, (1874) L. R. 5 P. C. 417; 43 L. J. P. C. 39; 30 L. T. 237; 22 W. R. 516; *Ex parte Bradlaugh*, (1878) 3 Q. B. D. 509; 47 L. J. M. C. 105; 38 L. T. 680; 26 W. R. 758; 42 J. P. 583; *Reg.* v. *Bradley*, (1894) 63 L. J. M. C. 183; 70 L. T. 379; 58 J. P. 199; 17 Cox C. C. 739. As to what is an order made by virtue of this Act, see *Reg.* v. *Justices of Rippon*, (1837) 7 A. & E. 417; *Reg.* v. *Justices of Lancashire*, (1839) 11 A. & E. 144.

Application of penalties in quarter sessions boroughs.

221.—(1.) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough (*a*).

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(a) Directs payment thereof to the informer or to any person aggrieved; or

(b) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund (*b*); or

(c) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown (*c*).

(*a*) Such fines go to the borough fund under s. 142, *ante*. A similar provision contained in s. 126 of the Act of 1835 was held to apply to penalties which were imposed by a subsequent Act and were thereby made payable to the Crown. *Attorney-General* v. *Moore*, (1878) 3 Ex. D. 276; 47 L. J. M. C. 103; 38 L. T. 251; 26 W. R. 366; 42 J. P. 7. In a borough which has not a separate court of quarter sessions the fines are payable to the county treasurer under 11 & 12 Vict. c. 43, s. 31, whether the borough has a separate commission of the peace or not. *Mayor of Reigate* v. *Hart*, (1868) L. R. 3 Q. B. 244; 9 B. & S. 129; 37 L. J. M. C. 70; 18 L. T. (N. S.) 237; 16 W. R. 896; 32 J. P. 342; *Winn* v. *Mossman*, (1869) L. R. 4 Ex. 292; 38 L. J. Ex. 200; 20 L. T. (N. S.) 672; 17 W. R. 924; 33 J. P. 743.

(*b*) See, for instance, 35 & 36 Vict. c. 94, s. 66, referred to in the note to 53 & 54 Vict. c. 45, s. 16, *post*, p. 496.

(*c*) See 38 & 39 Vict. c. 25, s. 15; 41 & 42 Vict. c. 74, s. 66; 53 & 54 Vict. c. 45, s. 16; and *Seamen's Hospital Society* v. *Mayor of Liverpool*, (1849) 4 Exch. 180; 18 L. J. Ex. 371. As to the application of penalties under local Acts, see *Alison* v. *Charlesworth*, (1885) 49 J. P. 294; *Alison* v. *Hall*, (1888) 4 T. L. R. 524.

County Councils.—Section 75 (16) (*a*) of the Local Government Act, 1888, provides that nothing in the Act of 1882 as applied by that section is to alter the application of any fine, penalty, or forfeiture recoverable in a summary manner.

Duties of clerk of peace as to fines and forfeitures.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

County Councils.—Except in London, the clerk of the peace of a county is also the clerk of the county council. Local Government Act, 1888, s. 83 (1), (11).

Service of summons or warrant.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

This section does not apply to a warrant of committal in default of payment of a fine. *Reg.* v. *Cumpton*, (1880) 5 Q. B. D. 341; 49 L. J. M. C. 41; 42 L. T. 543; 28 W. R. 539; 44 J. P. 489. As to the justices for a borough, see s. 155 and notes, *ante*.

Procedure in penal actions against corporate officers.

224.—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally

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on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose (*a*).

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client (*b*).

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff (*c*).

(*a*) The fine is incurred under s. 41, *ante*. For the definition of "corporate office," see s. 7 (1).

Under a similar provision in the Act of 1835 it was held that it was not necessary to state in the declaration that the plaintiff was a burgess. *Simpson* v. *Ready*, (1844) 12 M. & W. 736; 13 L. J. Ex. 193; 1 D. & L. 1024.

The notice need not be a single document, but may be contained in a series of letters. See *Lamley* v. *Mayor of East Retford*, (1891) 55 J. P. 133.

The Public Authorities Protection Act, 1893, does not appear to apply to proceedings taken under this section. See *Humphriss* v. *Worwood*, (1894) 64 L. J. Q. B. 437, cited in note (*b*) to s. 1 of that Act, *post*, p. 540.

(*b*) The Court does not appear to have any discretion with regard to the costs if the defendant succeeds, for the Rules of the Supreme Court do not overrule the provisions of any statute which gives special costs in particular cases. See *Hasker* v. *Wood*, (1885) 54 L. J. Q. B. 419; 33 W. R. 697; *Reeve* v. *Gibson*, [1891] 1 Q. B. 652; 60 L. J. Q. B. 451; 39 W. R. 420; and see the judgment of Vaughan Williams, L.J., in *Bostock* v. *Ramsey Urban District Council*, *post*, p. 542, with reference to the similar provision in s. 1 (c) of the Public Authorities Protection Act, 1893. In *Cox* v. *Truscott*, (1905) 92 L. T. 650; 69 J. P. 174; 3 L. G. R. 431; 21 T. L. R. 319, the plaintiff was ordered to pay the defendant's costs as between solicitor and client in accordance with the provision in the text.

(*c*) The other moiety goes to the borough fund under s. 221.

Quo warranto and mandamus.

225.—(1.) An application for an information in the nature of a quo warranto against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election (*a*).

(2.) In the case of such an application, or of an application for a mandamus to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application (*b*).

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the

application, may, if it thinks fit, make the rule for the information or mandamus absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster (*c*).

(8.) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance (*d*).

(*a*) The expression "corporate office" is defined by s. 7, *ante*, as meaning the office of mayor, alderman, councillor, or elective auditor.

Section 87, *ante*, provides that a municipal election (*i.e.*, an election to a corporate office) may be questioned by an election petition on any of the following grounds, and may not be questioned on any of those grounds except by an election petition :—

(a) that the election was, as to the borough or ward, wholly avoided by general bribery, treating, undue influence, or personation ; or

(b) that the election was avoided by corrupt practices or offences against Part IV. of the Act committed at the election ; or

(c) that the person whose election is questioned was at the time of the election disqualified ; or

(d) that he was not duly elected by a majority of lawful votes.

An election may also be questioned by an election petition on the ground that it was avoided by illegal practices under 47 & 48 Vict. c. 70, s. 25, *post*, p. 392.

Proceedings by way of *quo warranto*, therefore, will not lie in cases where the election is questioned ; but an information in the nature of a *quo warranto* is still the proper remedy where a corporate office is held by an unqualified person. Thus an undischarged bankrupt, who is disqualified not only for election but for holding the office after his election, may be ousted by *quo warranto*, even though his disqualification existed at the time of his election. *R.* v. *Beer*, [1903] 2 K. B. 693 ; 72 L. J. K. B. 608 ; 89 L. T. 412 ; 67 J. P. 326 ; 10 Manson, 263 ; 1 L. G. R. 634 ; 19 T. L. R. 531.

The fact that the respondent has resigned the office is no answer to an application for a *quo warranto*. *R.* v. *Warlow*, (1813) 2 M. & S. 75 ; 14 R. R. 592. But the information will not be granted unless it is shown that the respondent was not merely elected to the office, but accepted it and was admitted to it. See *Reg.* v. *Tidy*, [1892] 2 Q. B. 179 ; 61 L. J. Q. B. 791 ; 67 L. T. 319 ; 41 W. R. 128 ; 56 J. P. 650 ; 8 T. L. R. 646 ; and *Reg.* v. *Mayor of Bangor*, (1886) 18 Q. B. D. 349 ; 56 L. J. Q. B. 326 ; 56 L. T. 434 ; 35 W. R. 158 ; 51 J. P. 51 ; 3 T. L. R. 176. An application for a *quo warranto* against a metropolitan vestryman who had ceased to be qualified was refused on the ground that there was no evidence that he had acted in the office after losing his qualification. *Reg.* v. *Williams*, (1894) 64 L. J. M. C. 34 ; 43 W. R. 140 ; 11 T. L. R. 17.

Any inhabitant of the borough may be a relator, whether he is a burgess or not. *R.* v. *Parry*, (1837) 6 A. & E. 810 ; 45 R. R. 614 ; *Reg.* v. *Quayle*, (1840) 11 A. & E. 508 ; and see *Reg.* v. *Thirlwind*, (1864) 33 L. J. Q. B. 171 ; 9 L. T. (N. S.) 731 ; 10 Jur. (N. S.) 206 ; 12 W. R. 384.

Where a person who had been elected an alderman was subsequently struck off the burgess roll on the ground that he had ceased to occupy property in the borough, but continued to act as an alderman, it was held that an application for a *quo warranto* made after the expiration of twelve months from the time when he ceased to occupy was too late, although the fact that he had ceased to occupy was not known until he was struck off the roll. Such a person, however, may be liable to a penalty under s. 41, *ante*, if he acts in the office when disqualified after the expiration of the twelve months. *Ex parte Birkbeck*, (1874) L. R. 9 Q. B. 256 ; 22 W. R. 299.

See also s. 73, *ante*, as to the limit of time for taking proceedings to question an election. In the case of a disqualification under a continuing contract, the disqualification arises *de die in diem*. *Reg.* v. *Francis*, (1852) 18 Q. B. 526 ; 21 L. J. Q. B. 304 ; 16 Jur. 1045.

Proceedings in *quo warranto* are to be deemed to be civil proceedings, whether for purposes of appeal or otherwise. 47 & 48 Vict. c. 61, s. 15. As to the discretion of the Court to grant or refuse the application, see *Reg.* v. *Ward*, (1873) L. R. 8 Q. B. 210 ; 42 L. J. Q. B. 126 ; 37 J. P. 453 ; *Reg.* v. *Cousins*, (1873) L. R. 8 Q. B. 216 ; 42 L. J. Q. B. 124 ; 28 L. T. (N. S.) 116 ; 37 J. P. 470. The practice is now

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regulated by Rules 40—48, 123, and 124 of the Crown Office Rules, 1906, and Order 68, Rule 2, of the Rules of the Supreme Court.

(*b*) *Mandamus* does not lie where an election petition can be presented. See note (*a*), *supra*. Where an office is full *de facto*, the title to the office must be questioned by *quo warranto* or election petition, and not by *mandamus*. *Reg.* v. *Phippen*, (1838) 7 A. & E. 966; *Reg.* v. *Mayor of Chester*, (1855) 25 L. J. Q. B. 61; 2 Jur. (N. S.) 114; 26 L. T. (O. S.) 71; 4 W. R. 14; *Reg.* v. *Mayor of Welchpool*, (1876) 35 L. T. 594; *R.* v. *Beer*, *supra*, note (*a*).

As to a *mandamus* to fill a casual vacancy, see the cases cited in the note to s. 40, *ante*.

The term "corporate officer" is not defined in the Act, but appears to mean the holder of a corporate office as defined by s. 7. Under earlier Acts it was held that the term did not include a burgess or a coroner appointed by the town council. *Re Milner*, (1844) 5 Q. B. 589; Dav. & M. 495; *Reg.* v. *Grimshaw*, (1847) 5 D. & L. 249.

As to the practice on an application for a *mandamus*, see Rules 49—68, 125 and 266 of the Crown Office Rules, 1906, and Order 68, Rule 2, of the Rules of the Supreme Court.

(*c*) Now in the King's Bench Division of the High Court.

(*d*) For an instance of a writ of *mandamus* made peremptory in the first instance, see *Reg.* v. *Mayor of Wilton*, (1886) 34 W. R. 273.

Provisions for protection of persons acting under Act.

226.—(1.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

Sub-sections (1) and (2) of this section appear to be superseded by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61). See the note to that Act, *post*, p. 537.

An action to recover a penalty under s. 75, *ante*, for an offence in relation to the burgess list, and an action to recover a penalty under s. 224, *ante*, from a person who has acted in a corporate office when disqualified, must both be brought within three months after the cause of action arose.

As to the borough fund and the borough rate, see ss. 139 and 144, *ante*.

County Councils.—As to the payment out of the county fund of the costs incurred by any justice, police officer, or constable in defending legal proceedings taken against him in respect of any order made or act done in the execution of his duty, see s. 66 of the Local Government Act, 1888.

Power for borough constables to take bail.

227.—(1.) Where a party charged with a petty misdemeanour is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.

(2.) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice.

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.

(5.) [*If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.*

(6.) *The clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in quarter sessions.*]

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.

(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.

Sub-sections (5) and (6) have been repealed by s. 4 of the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43). The recognisance can now be enforced by a court of summary jurisdiction under s. 9 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

A similar power of taking bail is given to a police officer in charge of any police station by s. 38 of the Summary Jurisdiction Act, 1879, which is declared not to have been repealed by the provision in the text. 47 & 48 Vict. c. 43, s. 9.

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PART XIII.

GENERAL.

[The whole of this Part (ss. 228—260), except the provisions relating to boundaries (ss. 228, 229, 251, and 257), is made applicable to county councils by s. 75 of the Local Government Act, 1888.]

Boundaries.

Boundaries of boroughs and transfer of parts to counties.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed (*a*).

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed (*b*).

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodging, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any purpose, in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, depôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed (*c*).

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

(*a*) See *R.* v. *Justices of Gloucestershire*, (1836) 4 A. & E. 689, decided under a similar provision in the Act of 1835.

Section 250 (2), *post*, contains a saving for the boundaries of existing boroughs. As to the alteration of the boundaries of a borough, see s. 54 of the Local Government Act, 1888, *post*, p. 437.

Places within the limits of a borough existing at the time when the Act was passed are parts of the borough for all purposes, so that an ancient borough market may lawfully be held within such limits although outside the original limits of the borough. *Mayor of Dorchester* v. *Ensor*, (1869) L. R. 4 Ex. 335.

A local Act passed in 1822 made it an offence to sell vegetables, &c., within the town of Rochdale, except in the market place. The limits of the town were not

defined by the Act, and they were subsequently extended by an Act passed in 1872. It was held that the provisions of the Act of 1822 applied to the town as extended by the Act of 1872. *Killmister* v. *Fitton*, (1885) 53 L. T. 959.

(*b*) As to the jurisdiction of justices in places separated from a borough, see s. 189, *ante*.

(*c*) Every prison, wheresoever situate, is to be deemed for all purposes to be within the limits of the place for which it is used as a prison. 28 & 29 Vict. c. 126, s. 57; and see 40 & 41 Vict. c. 21, s. 30.

County Councils.—The provisions of this Act relating to boundaries do not apply to county councils. Local Government Act, 1888, s. 75 (16) (*b*). The provisions of that Act relating to boundaries are contained in Part III. (ss. 50—63).

Adjustment between boroughs and counties on change of boundaries.

229. If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid; and the rate aforesaid shall continue to be levied by warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

The boundaries of a borough may now be altered by an order made under s. 54 of the Local Government Act, 1888, *post*, p. 437. Section 62 of that Act provides for the adjustment of property and liabilities in such a case.

County Councils.—See the note to s. 228. Provision is made for adjustment between counties and boroughs upon an alteration of boundaries by s. 62 of the Local Government Act, 1888, *post*.

Time.

Computation of time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one

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of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Where the time limited for the doing of an act is so many "clear days" or so many days "at least," both the terminal days are to be excluded from the computation. *Zouch* v. *Empsey*, (1821) 4 B. & Ald. 522; *Liffin* v. *Pitcher*, (1842) 1 Dowl. (N. S.) 767; 6 Jur. 537; *Reg.* v. *Shropshire Justices*, (1838) 8 A. & E. 173; 3 N. & P. 286; 7 L. J. (N. S.) M. C. 56; 2 Jur. 807; 47 R. R. 546; *Young* v. *Higgon*, (1840) 6 M. & W. 49; *Howes* v. *Turner*, (1876) 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58; 40 J. P. 680; *Re Railway Sleepers Co.*, (1885) 29 Ch. D. 204; 54 L. J. Ch. 720; 52 L. T. 731; 33 W. R. 595; 1 T. L. R. 399.

Expressions of time occurring in any Act of Parliament relate to Greenwich mean time, unless it is otherwise specifically stated. 43 & 44 Vict. c. 9.

As to the date of the election where November 1st is a Sunday, see the note to s. 54, *ante*.

Distance.

Measurement of distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

This section regulates the mode in which the distances mentioned in ss. 9 and 11 with respect to the qualification of a burgess by residence are to be measured.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

Among the documents which are required by the Act to be fixed on the town hall are notices of elections. See ss. 54 and 70.

County Councils.—Documents relating to County Councils must be fixed in some conspicuous place in the county or the electoral division to which they relate.

Inspection and Copies.

Inspection of documents.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom (*a*).

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money (*b*).

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy (*c*).

(5.) The Freemen's Roll shall be open to public inspection, and the

town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy (*d*).

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed (*e*).

(7.) If a person having the custody of any document in this section mentioned,—

(a) Obstructs any person authorized to inspect the same in making such inspection thereof as in this section mentioned; or

(b) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

(*a*) As to the minutes of the council, see s. 22 and Schedule 2, Rule 12. The right of inspection has been held to extend to the minutes of acts of committees which have been submitted to the council for approval, whether they have been approved or not. *Williams* v. *Mayor of Manchester*, (1897) 45 W. R. 412; 13 T. L. R. 299.

(*b*) As to orders of the council for the payment of money, see ss. 140 and 141.

(*c*) As to the treasurer's accounts and the abstract, see ss. 26 and 27. The right of inspection can be enforced by *mandamus*, but the applicant must satisfy the Court that he has some reasonable ground for desiring the inspection. The council have no right to refuse inspection on the ground that the applicant might make use of the information which he obtained in a way antagonistic to the council. *R.* v. *Southwold Corporation*, (1907) 97 L. T. 431; 71 J. P. 351; 5 L. G. R. 888. See also *May* v. *Gwynne*, (1821) 4 B. & Ald. 301; *Reg.* v. *Wimbledon Urban District Council*, (1898) 77 L. T. 599; 14 T. L. R. 146; *R.* v. *Bradford-on-Avon Rural District Council*, (1908) 99 L. T. 89; 72 J. P. 348; 6 L. G. R. 847; *Bank of Bombay* v. *Sonji*, (1908) 99 L. T. 62; 24 T. L. R. 698.

(*d*) The Freemen's Roll is required by s. 203 to be kept by the town clerk.

(*e*) A copy of any application to the Local Government Board for their approval of a sale or loan, and of the correspondence, must be kept open to public inspection under s. 236, *post*.

County Councils.—The provisions relating to the inspection and abstract of the accounts are applied to the accounts of a county council and of their treasurer and officers by s. 71 (2) of the Local Government Act, 1888, *post*. The accounts of a joint committee appointed by two or more county councils are to be deemed to be the accounts of the councils by which the committee was appointed. *Ibid.*, s. 81 (6).

Where the London County Council delegate to their education committee any powers, and the acts and proceedings of the committee as respects the exercise of those powers are not required to be submitted to the council for their approval (see s. 17 of the Education Act, 1902, *post*), sub-s. (1) of this section is to apply to the minutes of the committee relating to the exercise of those powers as it applies to the minutes of the council. Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. 1, r. 7.

Fees.

Tables of fees to be posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorized to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

(a) The room where the business of the town clerk's office is transacted;

(b) The room, if any, where the justices of the borough sit for transacting their business;

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(c) The room, if any, where the court of quarter sessions of the borough is held; and

(d) The room, if any, where the borough civil court is held.

As to the table of fees to be taken by the clerk of the peace, see s. 164, *ante*. The table of fees to be taken by the clerk to the borough justices is made under 40 & 41 Vict. c. 43, s. 8, *post*, p. 325.

As to the fees to be taken by the officers of the borough civil court, see s. 178, *ante*.

Seals and Signatures.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a byelaw made under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

As to the authentication of byelaws made under this Act, see s. 24, *ante*; and as to the signature of minutes, see s. 22 (5), *ante*.

See also s. 74, *ante*, as to the forgery of a nomination paper.

Applications to Treasury.

Notice of application to and correspondence with *Treasury*.

236.—(1.) Where the council intend to apply to the *Treasury* for their approval of any sale, loan, or other financial arrangement under this Act, notice of the intention to make the application shall be fixed on the town hall one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection.

(2.) If the *Treasury* either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the *Treasury* and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

The application is now to be made to the Local Government Board, to whom the powers of the Treasury under Part V. of this Act have been transferred by s. 72 of the Local Government Act, 1888, *post*, p. 444.

As to the fixing of notices on the town hall, see s. 232, *ante*; and as to the right of inspection, see s. 233.

Deputy.

Acts of deputy not to be invalidated by defect in appointment.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts.

Overseers.

Notices to and acting of overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them.

(2.) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

The expression "Municipal Corporations Acts" is defined by s. 7, *ante*, as meaning this Act and any Act to be passed amending it. As to the duties of the overseers in relation to the preparation of the parish burgess lists, see Part III., *ante*.

An assistant overseer may be counted in reckoning the majority of the overseers. See the definition of "overseers" in s. 7, *ante*, and *Baker* v. *Locke*, (1864) 18 C. B. N. S. 52; 34 L. J. C. P. 49; 11 Jur. (N. S.) 65; 11 L. T. (N. S.) 567; 13 W. R. 258.

Declarations and Oaths.

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Power to administer oaths, &c.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorize the taking or making of any oath or declaration that would not have been required or authorized under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

31 & 32 Vict. c. 72.

For cases in which a declaration or oath is required by this Act, see ss. 35, 157, 163, 196.

Section 12 of the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), *post*, p. 249, substituted for the oath formerly required to be taken on admission to membership in or accepting an office in or under any municipal corporation, a declaration that the declarant would faithfully demean himself as a member of such corporation, or would faithfully perform the duties of his office. The making of a declaration under that section is to have the same effect as the taking of the oath would have had. As to the manner in which oaths may be administered, see the Oaths Act, 1909, *post*, p. 669.

Forms.

Forms in schedule.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

An election is not invalidated by a mistake in the use of the forms in the Eighth Schedule if it was conducted in accordance with the principles laid down in the body of the Act. Section 72, *ante*.

County Councils.—This section is incorporated by s. 75 of the Local Government Act, 1888, which also incorporates Part I. of the Eighth Schedule. Part II. of that Schedule, which contains forms relating to elections, is not incorporated, but it appears that the forms contained in that Part of the Schedule may be used at county council elections. See *Marton* v. *Gorrill*, cited in the note to s. 72, ante.

Misnomer or inaccurate description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood.

A similar provision in s. 142 of the Act of 1835 was held to apply where the address of a voter was stated in a voting paper as K. street, while his qualification on the burgess roll was described as a house in M. street, where it was shown that the house in question was a corner house with a door in each street. *Reg.* v. *Gregory*, (1853) 1 E. & B. 600; 22 L. J. Q. B. 120; 17 Jur. 272; 21 L. T. (O. S.) 94; 1 W. R. 148. See also *Reg.* v. *Spratley*, (1856) 6 E. & B. 363; 25 L. J. Q. B. 257; 2 Jur. (N. S.) 735; 27 L. T. (O. S.) 102; 4 W. R. 527. The section was also held to apply where the Christian name of a voter had been entered on the burgess roll by mistake as James instead of Joseph and he voted in the name entered on the roll. *Reg.* v. *Thwaites*, (1853) 1 E. & B. 704; 22 L. J. Q. B. 238; 17 Jur. 712; 21 L. T. (O. S.) 72. The use of an initial instead of the Christian name of a candidate in a voting paper was held to be a misnomer which was cured by this provision. *Reg.* v. *Plenty*, (1869) L. R. 4 Q. B. 346; 38 L. J. Q. B. 205; 20 L. T. (N. S.) 521; 17 W. R. 792.

On the other hand, the section was held not to apply where the address given as

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that of the voter was a wrong address and not merely an inaccurate description of his real address. *Reg.* v. *Coward*, (1851) 16 Q. B. 819. See also *Reg.* v. *Deighton*, (1844) 5 Q. B. 896; 13 L. J. Q. B. 241; 8 Jur. 686. The total omission of the description of a candidate was held not to be an inaccurate description within the meaning of the section. *Reg.* v. *Tugwell*, (1868) L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; 16 W. R. 1039.

A nomination paper was subscribed by an assenting burgess with his full name, Charles Arthur Burman, but his name had by mistake been entered on the burgess roll as Charles Burman only. It was held that this mistake in the burgess roll was not cured by this section, which applies only to cases where the description would be understood by any person who compared the nomination paper with the burgess roll. *Moorhouse* v. *Linney*, (1885) 15 Q. B. D. 273; 53 L. T. 343; 33 W. R. 704; 49 J. P. 471; 1 T. L. R. 500. But where an assenting burgess whose full name was Henry Devereux Davenport appeared on the burgess roll as Davenport, Henry D. Evereux, it was held that this mistake was remedied by the present section. *Harding* v. *Cornwall*, (1889) 60 L. T. 959.

The misnomer of a candidate in a nomination paper, where the initial only of his Christian name was given, was held not to be remedied by s. 142 of the Act of 1835, because nomination papers were not mentioned in that section, and were not known when that Act was passed. *Mather* v. *Brown*, (1876) 1 C. P. D. 596; 45 L. J. C. P. 547; 34 L. T. 869; 24 W. R. 736; 40 J. P. 616. The present section may perhaps be held to apply to nomination papers, but this point has not been decided. See *Bowden* v. *Besley*, (1888) 21 Q. B. D. 309; 57 L. J. Q. B. 473; 59 L. T. 219; 36 W. R. 889; 52 J. P. 536; 4 T. L. R. 590, where the Court (Manisty and Stephen, JJ.) expressed conflicting opinions on this question. See also s. 72, *ante*, which provides that an election shall not be invalidated by mistake in the use of the forms in the Eighth Schedule if it was conducted in accordance with the principles laid down in the body of the Act; and see *Marton* v. *Gorrill*, cited in the note to that section, *ante*, p. 67.

See also the cases cited in the notes to Schedule 3, Part II., Rules 2 and 5, *post*, as to what is a sufficient signature of a nomination paper, and a sufficient statement of the names of the candidate.

Substitution in former Acts.

Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, &c.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connexion therewith, such provision of this Act as is also mentioned in connexion therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

As to the effect of this section in incorporating s. 14 of the Judicature Act, 1881, so as to give a right of appeal by leave to the Court of Appeal from the decision of a Divisional Court upon an election petition stated as a special case, see note (*e*) to s. 93, *ante*.

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243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Short titles of Acts partly repealed.

Returning Officers at Parliamentary Elections.

Mayor of certain boroughs to be returning officer in parliamentary elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2.) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer.

For a list of the boroughs which are counties of themselves, see the note to s. 170, *ante*. In those places the sheriff is the returning officer. Whenever a parliamentary borough becomes a municipal borough, the mayor is to take the place of the returning officer. 31 & 32 Vict. c. 58, s. 33. As to the right of a returning officer at a parliamentary election to give a casting vote, see s. 2 of the Ballot Act, 1872, *post*, p. 258.

Berwick-upon-Tweed is no longer a parliamentary borough. 48 & 49 Vict. c. 23, s. 2.

Disfranchised Parliamentary Boroughs.

Electors in disfranchised boroughs. 30 & 31 Vict. c. 102.

245. Where a borough has, in pursuance of the Representation of the People Act, 1867, or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote.

Licensing.

Explanation of terms "town corporate," &c., in Licensing Act.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licences to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

This provision refers only to the power of granting or withdrawing alehouse licences under the Alehouse Act, 1828, and does not affect the application of penalties levied under that Act, as to which see s. 221, *ante*, and note (*a*) thereto. *Winn* v. *Mossman*, (1869) L. R. 4 Ex. 292; 38 L. J. Ex. 200; 20 L. T. (N. S.) 672; 17 W. R. 924; 33 J. P. 743.

Freedom of Trading.

Right of free trading in boroughs.

247. Notwithstanding any custom or byelaw, every person in any borough may keep any shop for the sale of all lawful wares and

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merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

This section does not prevent the borough council from making byelaws for the regulation of trade under s. 23, *ante*. See note (*a*) to that section.

Cinque Ports.

Special provisions as to certain of the Cinque Ports.

248.—(1.) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs.

(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3). The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licences or authorities to persons to keep inns, ale-houses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace.

(5.) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a separate court of quarter sessions shall be charged by the respective courts of quarter sessions of the five boroughs, with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in a manner by this Act directed with respect to jurors in boroughs.

32 & 33 Vict. c. 53.

(7.) Nothing in this section shall affect the Cinque Ports Act, 1869, or the Acts therein recited.

The Cinque Ports were originally Sandwich, Dover, Hythe, Romney, and Hastings. To these have been added the two "ancient towns" of Rye and

Winchelsea. Most of these boroughs had subordinate ports or towns attached to them, which were called their corporate members; and there were also towns and villages under their jurisdiction which were unincorporate members of the Cinque Ports. See Archbold's Quarter Sessions (5th edition), p. 14. Hastings is now a county borough, and Sandwich, Dover, and Hythe are quarter sessions boroughs. For the purposes of the county council the Cinque Ports and their members form part of the county in which they are respectively situate, without prejudice to their position as quarter sessions boroughs under this Act. Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 48 (4). See also the saving as to the Cinque Ports in ss. 13 and 14 of the Municipal Corporations Act, 1883, *post*, p. 200.

As to juries in boroughs, see s. 186, *ante*.

The Acts referred to in sub-s. (7) are 18 & 19 Vict. c. 48; 20 & 21 Vict. c. 1; 32 & 33 Vict. c. 53.

Cambridge.

Vice-Chancellor of Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

See the saving for the rights of the Universities of Oxford and Cambridge in s. 257, *post*.

Savings.

Saving for existing corporations.

250.—(1.) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice, nevertheless, to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act.

(2.) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

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(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorized by law to so collect, and are so collecting, the same.

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

Section 125 of the Local Government Act, 1888, *post*, contains a saving for the powers, rights, privileges, and immunities of municipal corporations and for the operation of municipal charters, local Acts of Parliament, and orders confirmed by Parliament, save so far as may be necessary to give effect to that Act or any scheme or order or other thing made or done thereunder. See *Re Staffordshire and Derbyshire County Councils*, (1890) 54 J. P. 566. As to the power to amend a local Act by a scheme or order, see s. 59 (4), (6) of that Act, *post*.

Saving for local Acts.

251. Nothing in this Act shall alter the effect of any local Act of Parliament.

County Councils.—This section does not apply to county councils. Local Government Act, 1888, s. 75 (16) (*b*). Section 125 of that Act contains a saving for local Acts. See the note to s. 250, *ante*.

Saving for Prison Acts. 28 & 29 Vict. c. 126. 40 & 41 Vict. c. 21. 13 & 14 Vict. c. 91.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

The provision referring to the Ninth Schedule is contained in s. 242.

Saving for military and naval officers, &c.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

See note (*b*) to s. 34, *ante*.

Saving for dockyards, barracks, &c.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

256. Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports.

Saving for Lord Warden.

257. Nothing in this Act shall—

Saving for universities.

(1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or

(2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively (*a*); or

(3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities; or

(4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge (*b*); or

(5.) [*Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act* (*c*); *or*]

(6.) Authorize the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or

(7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

(*a*) As to the precedence of the mayor of a borough, see ss. 15 (5) and 155.

See also s. 249 as to the Vice-Chancellor of the University of Cambridge being appointed a justice for that borough.

(*b*) This sub-section is repealed, so far as concerns the councillors and aldermen elected to represent the Universities of Oxford and Cambridge, by 52 & 53 Vict. c. xv and 52 & 53 Vict. c. cxvi. See note (*a*) to s. 11, and the note to s. 14, *ante*, pp. 19, 27.

(c) This sub-section is repealed altogether by the Acts referred to in the preceding note.

County Councils.—This section does not apply to county councils. Local Government Act, 1888, s. 75 (16) (*b*).

Saving for jurisdiction over cathedral precincts.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

Saving for royal prerogative.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative; and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative.

Saving as to repealed enactments.

260.—(1.) The repeal effected by this Act shall not affect—

(a) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or

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(b) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or

(c) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or

(d) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or

(e) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or

(f) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or

(g) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.

(2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, byelaw, jurisdiction, office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.

(3.) All elections, declarations, appointments, byelaws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

SCHEDULES.

THE FIRST SCHEDULE.

[See section 5, *ante*, p. 2.]

ENACTMENTS REPEALED.

Part I.

Enactments repealed generally.

5 & 6 Will. 4. c. 76 ..	The Municipal Corporations Act, 1835.
6 & 7 Will. 4. c. 77 .. in part.	An Act for carrying into effect the reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage; in part, namely,— section twenty-six.
6 & 7 Will. 4. c. 103 . in part.	The Municipal Corporation (Boundaries) Act, 1836; except section six (Berwick).
6 & 7 Will. 4. c. 104 .	The Municipal Corporation (Borough Fund) Act, 1836.
6 & 7 Will. 4. c. 105 .	The Municipal Corporation (Justices, &c.) Act, 1836.
7 Will. 4. & 1 Vict. c. 78.	The Municipal Corporation (General) Act, 1837.
7 Will. 4. & 1 Vict. c. 81.	The Municipal Corporation (Watch Rate) Act, 1837.
1 & 2 Vict. c. 31	The Municipal Corporation (Benefices) Act, 1838.
1 & 2 Vict. c. 35	An Act to repeal the stamp duty now paid on admission to the freedom of corporations in England.
2 & 3 Vict. c. 27	The Municipal Corporation (Borough Courts) Act, 1839.
2 & 3 Vict. c. 28	The Municipal Corporation (Watch Rate) Act, 1839.
3 & 4 Vict. c. 28	The Municipal Corporation (Watch Rate) Act, 1840.
4 & 5 Vict. c. 48	An Act to render certain municipal corporations rateable to the relief of the poor in certain cases.
6 & 7 Vict. c. 89	The Municipal Corporation Act, 1843.
8 & 9 Vict. c. 110 ...	The Municipal Corporation (Rates) Act, 1845.
11 & 12 Vict. c. 93 ..	An Act to confirm the incorporation of certain boroughs.
12 & 13 Vict. c. 65 ..	An Act to provide a more convenient mode of levying and collecting county rates, county police rates, and district police rates, in parishes situated partly within and partly without the limits of boroughs which are not liable to such rates.
12 & 13 Vict. c. 82 .. in part.	An Act to relieve boroughs in certain cases from contribution to certain descriptions of county expenditure; in part, namely,— section one.
13 & 14 Vict. c. 42 ..	The Municipal Corporation (Incorporation) Act, 1850.
13 & 14 Vict. c. 64 ..	The Municipal Corporation (Bridges) Act, 1850.
13 & 14 Vict. c. 91 .. in part.	The Municipal Corporation (Justices) Act, 1850; in part, namely,— section nine.

Schedule 1, Part I.

13 & 14 Vict. c. 101 in part.	An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty, for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund; and to make certain amendments in the laws for the relief of the poor; in part, namely,— section ten.
15 & 16 Vict. c. 81 .. in part.	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales; in part, namely,— section thirty-eight.
16 & 17 Vict. c. 79 ..	The Municipal Corporation Act, 1853.
16 & 17 Vict. c. 137 .	The Charitable Trusts Act, 1853; in part, namely,— section sixty-five.
20 & 21 Vict. c. 50 ..	The Municipal Corporation Act, 1857.
21 & 22 Vict. c. 43 ..	An Act to amend the municipal franchise in certain cases.
22 Vict. c. 35 ..	The Municipal Corporation Act, 1859.
22 & 23 Vict. c. 32 .. in part.	An Act to amend the law concerning the police in counties and boroughs in England and Wales; in part, namely,— sections five and six.
24 & 25 Vict. c. 75 ..	The Municipal Corporations Acts Amendment Act, 1861.
31 & 32 Vict. c. 41 ..	The Borough Electors Act, 1868.
32 & 33 Vict. c. 23 ..	The Municipal Corporation (Recorders) Act, 1869.
32 & 33 Vict. c. 55 ..	The Municipal Corporation (Election) Act, 1869.
32 & 33 Vict. c. 62 .. in part.	The Debtors Act, 1869; in part, namely,— section twenty-one.
34 & 35 Vict. c. 67 ..	The Municipal Corporations Act, 1859, Amendment Act.
35 & 36 Vict. c. 33 .. in part.	The Ballot Act, 1872; in part, namely,— sections twenty and twenty-one,
35 & 36 Vict. c. 60 ..	The Corrupt Practices (Municipal Elections) Act, 1872.
36 & 37 Vict. c. 33 ..	The Municipal Corporations Evidence Act, 1873.
37 & 38 Vict. c. 59 ..	The Working Men's Dwellings Act, 1874.
38 & 39 Vict. c. 40 ..	The Municipal Elections Act, 1875.
39 & 40 Vict. c. 61 .. in part.	The Divided Parishes and Poor Law Amendment Act, 1876; in part, namely,— section thirty.
40 & 41 Vict. c. 69 ..	The Municipal Corporations (New Charters) Act, 1877.
41 & 42 Vict. c. 26 .. in part.	The Parliamentary and Municipal Registration Act, 1878; in part, namely,— sections twenty, thirty-four, and forty-one.

PART II.

Enactments repealed only as to Boroughs within this Act.

3 Edw. 1. c. 6 ..... in part.	The Statutes of Westminster, the first. Amerciaments shall be reasonable; in part, namely,— as far as it relates to a city, borough, or town.
3 Edw. 1. c. 31 ..... in part.	The Statutes of Westminster, the first. Excessive toll in market town. Murage; in part, namely,— from "Touching citizens" to "the King," inclusive.

Schedule 1, Part II.

15 Rich. 2. c. 5 ..... in part.	St. 7 Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain, where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands to gilds, fraternities, offices, commonalities; or to their use. in part, namely,— as far as it relates to mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty.
2 & 3 Phil. & Mary c. 18.	An Act touching commissions of the peace and gaol delivery in towns corporate not being counties in themselves.
7 Jas. 1. c. 5 ..... in part.	An Acte for ease in pleading against troublesome and contencious suites presented against justices of the peace, maiors, constables, and certaine other His Majesties officers for the lawful execution of their office; in part, namely,— as far as it relates to mayors of cities or towns corporate.
21 Jas. 1. c. 12 ..... in part.	An Acte for ease in pleading against troublesome and contencious suites; in part, namely,— section three, as far as it relates to mayors of cities or towns corporate.
11 Geo. 1. c. 4	An Act for preventing the inconvenience arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made.
12 Geo. 3. c. 21	An Act for giving relief in proceedings upon writs of mandamus for the admission of freemen into corporations and for other purposes therein mentioned.
32 Geo. 3. c. 58	An Act for the amendment of the law in proceedings upon information in nature of quo warranto.
55 Geo. 3. c. 51	An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates.
57 Geo. 3. c. 91	An Act to enable justices of the peace to settle the fees to be taken by clerks of the peace of the respective counties and other divisions of England and Wales.
2 & 3 Will. 4. c. 69 ..	An Act to prevent the application of corporate property to the purposes of election of members to serve in Parliament.
3 & 4 Will. 4. c. 31 .	An Act to enable the election of officers of corporations and other public companies now required to be held on the Lord's Day to be held on the Saturday next preceding or on the Monday next ensuing.
4 & 5 Will. 4. c. 27 .	An Act for the better administration of justice in certain boroughs and franchises.
7 Will. 4. & 1 Vict. c. 19.	An Act to empower the recorder or other person presiding at quarter sessions in corporate cities and towns, and justices of the peace for counties, ridings, or divisions, to divide their respective courts in certain cases.
5 & 6 Vict. c. 104 .	The Municipal Corporation Act, 1842.
15 & 16 Vict. c. 5 ...	The Municipal Corporation Act, 1852.
23 & 24 Vict. c. 16 ..	The Municipal Corporation (Mortgages, &c.) Act, 1860.
23 & 24 Vict. c. 51 .. in part.	The Local Taxation Returns Act, 1860; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.

Schedule 1, Part II.		
	23 & 24 Vict. c. 106 . in part.	The Lands Clauses Consolidation Acts Amendment Act, 1860 ; in part, namely,— section six.
	38 & 39 Vict. c. 89 .. in part.	The Public Works Loans Act, 1875 ; in part, namely,— in section forty, the second paragraph (beginning "The council" and ending "this Act"), and the words "and the council respectively" in the last paragraph.
	39 & 40 Vict. c. 20 .. in part.	The Statute Law Revision Act (Substituted Enactments) Act, 1876 ; in part, namely,— section three.
	40 & 41 Vict. c. 17 ..	An Act to amend the law relating to the division of courts of quarter sessions in boroughs.
	40 & 41 Vict. c. 66 .. in part.	The Local Taxation Returns Act, 1877; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
	42 & 43 Vict. c. 30 .. in part.	The Sale of Food and Drugs Act Amendment Act, 1879 ; in part, namely,— section eight.
	43 Vict. c. 17	The Town Councils and Local Boards Act, 1880.

THE SECOND SCHEDULE.

[See section 22, *ante*, p. 31.]

MEETINGS AND PROCEEDINGS OF COUNCIL.

[This Schedule is made applicable to county councils by s. 75 of the Local Government Act, 1888.]

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

General business is not defined by the Act, but appears to mean business prescribed by this or some other Act. See r. 8, *post*.

2. The quarterly meetings shall be held at noon on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

Noon is to be reckoned according to Greenwich time, wherever the borough is situate. 43 & 44 Vict. c. 9, s. 1.

If the 9th of November is a Sunday, the meeting may be held on the following day (s. 230, *ante*). As to the business to be transacted at the meeting in November, see the note to r. 8, *post*.

As to the power to make standing orders, see r. 13, *post*.

County Councils.—Instead of the 9th November, the day for holding the quarterly meeting of a county council is the 16th March or such other day within ten days after the ordinary day of retirement of county councillors (*i.e.* the 8th March in every third year, see the note to s. 13, *ante*) as the county council from time to time fix ; and the county council may fix any hour for the meeting instead of noon if they see fit. County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1, *post*, p. 512. But in any year which is not the year of election of county councillors the meeting may be held on such day in the months of March, April, or May as the county council from time to time determine. County Councils (Elections) Amendment Act, 1900 (63 & 64 Vict. c. 13), *post*, p. 591.

3. The mayor may at any time call a meeting of the council.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members

of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

Sundays and the other days mentioned in s. 230, *ante*, are to be excluded in reckoning the seven days.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall. Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.

In reckoning the three clear days, both the day on which the notice is fixed on the town hall and the day on which the meeting is to be held are to be excluded. Thus, if the meeting is to be held on a Friday, the notice must be fixed not later than the preceding Monday. See the note to s. 230. As to the mode of fixing the notice, see s. 232.

Where the meeting is called by the mayor, the business to be transacted is not required by this rule to be specified in the notice, but it must be specified in the summons sent to each member of the council under r. 6.

County Councils.—The meeting of a county council or of any committee thereof may be held at such place either within or without their county as the council from time to time direct. Local Government Act, 1888, s. 75 (21).

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

As to the mode of reckoning the three clear days, see the note to r. 5.

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

The first business to be transacted at the quarterly meeting in November is the election of the mayor (s. 61); next, the appointment of the sheriff in boroughs where a sheriff is to be appointed (s. 170); and, after that, the election of aldermen (s. 60). These elections must take precedence of all other business, and must be held in the prescribed order. See *R.* v. *Parkyns*, (1820) 3 B. & Ald. 668; 22 R. R. 519, and note (*b*) to s. 60. The assignment of an alderman to act as returning officer at a ward election is also to be made at this meeting. Section 53 (2).

A quarterly meeting may be adjourned in order to complete unfinished business, but no fresh business can be transacted at the adjourned meeting unless it has been specified, as required by r. 6, in a summons to attend that meeting. *Reg.* v. *Grimshaw*, (1847) 10 Q. B. 747; 16 L. J. Q. B. 385; 9 L. T. (O. S.) 221; 11 Jur. 965.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

The deputy mayor is appointed by the mayor under s. 16. He is not to take the chair at a meeting of the council unless specially appointed by the meeting to do so. Section 16 (3).

One of the duties of the chairman is to see that order is preserved at the meeting. The council have inherent power to take such steps as may be necessary to remove any obstruction that is offered to their deliberations. Thus a member of the council (and *a fortiori* a stranger) who is guilty of disorderly conduct may be removed, if necessary, by force, and, in case of persistent misconduct, may even be expelled. The council, however, cannot suspend a member for an indefinite time; the suspension should be limited to the meeting at which the disorderly conduct took place. The powers of the council extend only so far as is necessary for self-preservation; they have no power to inflict any punishment on the offender, nor can he be given into custody unless a breach of the peace has been committed. See *Wooding* v. *Oxley*, (1839) 9 C. & P. 1; *Doyle* v.

Schedule 2.

Falconer, (1866) L. R. 1 P. C. 328; 36 L. J. P. C. 33; 15 W. R. 366; *Barton* v. *Taylor*, (1886) 11 A. C. 197; 55 L. J. P. C. 1; 55 L. T. 158; 2 T. L. R. 382.

A member of the public, whether he is a burgess or not, has no right to attend meetings of the council except by their permission. *Tenby Corporation* v. *Mason*, [1908] 1 Ch. 457; 77 L. J. Ch. 230; 98 L. T. 349; 72 J. P. 89; 6 L. G. R. 233; 24 T. L. R. 254. It is now however provided by the Local Authorities (Admission of the Press to Meetings) Act, 1908 (8 Edw. 7, c. 43), *post*, that representatives of the press (*i.e.* duly accredited representatives of newspapers or of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers) are to be admitted to the meetings of every local authority as defined by the Act: provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest. The expression "local authority" in that Act includes among other local bodies a council of a county, county borough, or borough (including a metropolitan borough), and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; an education committee and a joint education committee established under s. 17 of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval; and a central body and a distress committee under the Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18). The Act does not extend to any meeting of a committee of a local authority unless the committee is itself a local authority as defined in the Act, but it does not prohibit a committee from admitting representatives of the press to its meetings, nor does it prohibit a local authority from admitting the public to its meetings.

County Councils.—In applying this rule to the meetings of a county council, the chairman and the vice-chairman are to be substituted for the mayor and the deputy mayor. Subject to any rules made by the county council, the vice-chairman has a right to preside in the absence of the chairman without being chosen for that purpose by the meeting. Local Government Act, 1888, s. 2 (5), (6).

10. All acts of the council and all questions coming or arising before the council may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one third of the number of the whole council.

Provided that a quorum of one third of the whole number of members is present, a resolution may be carried by a bare majority of the votes given, without regard to any members who, though present, have not voted.

A quorum of two thirds of the whole number of members is required for the making of byelaws under s. 23 (2).

An absolute majority of the whole number of the council is required in the case of a resolution under the Borough Funds Act, 1872, s. 4, *post*, p. 283. Other instances in which a special majority is required will be found in s. 2 of the Municipal Corporations Act, 1893, *post*, p. 209; s. 10 of the County Police Act, 1840, *post*, p. 215; and s. 1 of the Honorary Freedom of Boroughs Act, 1885, *post*, p. 407.

County Councils.—The quorum at a meeting of a county council is one fourth of the whole number of the council. Local Government Act, 1888, s. 75 (15).

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

This rule must be read subject to s. 22 (3), *ante*, which prevents the chairman from voting on any matter in which he has a pecuniary interest. As to the right to give a conditional casting vote, see *Bland* v. *Buchanan*, *ante*, p. 63.

The right to give a casting vote is conferred upon the chairman in two cases by ss. 60 (6) and 61 (4), even though he may not be entitled to vote in the first instance.

This rule does not apply to the meetings of committees of the council, but the right to give a casting vote can be conferred on the chairman at such meetings by standing orders made under r. 13.

County Councils.—The chairman at any meeting of a committee appointed by a county council has a second or casting vote. Local Government Act, 1888, s. 82 (1).

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act.

As to the signature of the minutes, see s. 22 (5), which provides that minutes duly signed are to be received in evidence without further proof. See also s. 22 (6) as to the

effect of such minutes. As to the right of inspecting the minutes of the council, see s. 233. The forgery of the signature subscribed to any minute of proceedings of the council is punishable under s. 235.

13. Subject to the foregoing provisions of this Schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

An action to restrain a town council from acting in contravention of their standing orders cannot be brought without the concurrence of the Attorney-General, the object of the action being to enforce performance of a public duty. *Watson* v. *Hythe Corporation*, (1906) 70 J. P. 153; 4 L. G. R. 340; 22 T. L. R. 245.

THE THIRD SCHEDULE.

ELECTIONS.

Part I.

Preparation and Revision of Parish Burgess Lists in Boroughs not Parliamentary.

[The provisions contained in Part I. of this Schedule are now obsolete. See note (*b*) to s. 44, *ante*.]

1. On or before each first of September, the overseers of each parish shall make, sign, and deliver to the town clerk a list, called the parish burgess list, of all persons entitled to be enrolled in the burgess roll for the year in respect of property in that parish.

2. The overseers shall keep a printed copy of the parish burgess list made by them open to public inspection on the first fifteen days of September.

3. The town clerk shall cause a printed copy of all the parish burgess lists to be fixed on the town hall, and to be kept so fixed during the last seven of those fifteen days.

4. Every person whose name is not in a parish burgess list, and who claims to have it inserted therein (in this Act referred to as a claimant), shall, on or before the fifteenth of September, give notice in writing of his claim to the town clerk.

5. Every person whose name is in a parish burgess list may object to any other person as not being entitled to have his name retained in that or any other parish burgess list.

6. Every person so objecting (in this Act referred to as an objector) shall, on or before the fifteenth of September, give to the town clerk, and also give to the person objected to, or leave at or on the property for which he appears in the parish burgess list to be rated, notice in writing of the objection.

7. The town clerk shall make two separate lists of the claimants and the persons objected to (in this Act referred to as respondents), and shall cause printed copies thereof to be fixed on the town hall, and to be kept so fixed during the last seven days of September.

8. He shall also keep a printed copy of each of these lists, open to public inspection on any day during the same seven days.

9. The mayor and the two revising assessors shall in each year revise the parish burgess lists.

10. They shall for this purpose hold an open court in the borough on some or one of the first fifteen days of October.

11. They shall give three clear days notice of the holding of the court, by notice fixed on the town hall.

12. The town clerk shall at the opening of the court produce the parish burgess lists, and a copy of the lists of claimants and respondents.

13. The court shall insert in the parish burgess lists the name of every person who has duly claimed to have his name inserted therein, and is proved to the satisfaction of the court to be so entitled.

14. The court shall expunge from the parish burgess lists the name of every person proved to the court to be dead.

15. Subject as aforesaid, the court shall retain in the parish burgess lists the name of every person to whom objection has not been duly made.

Schedule 3, Part I.

16. The court shall also retain therein the name of every respondent, unless the objector appears by himself, or by some person on his behalf, in support of the objection.

17. Where the objector so appears, the court shall require proof of the respondent's qualification, and, if it is not proved to the satisfaction of the court, shall expunge his name from the parish burgess list.

18. If the name of any person is entered in respect of property situate in more than one ward, the court may call upon him to choose, and if he does not choose, may determine in which of those wards he shall be entitled to vote.

19. The court shall correct any mistake and supply any omission proved to the court to have been made in any of the lists with respect to the name or abode of any person, or the description of any property.

20. The overseers, vestry clerks, and collectors of poor rates of every parish shall attend the court.

21. The court may require any overseer or person having the custody of any book containing any poor rate made in any year in any parish to produce the same at the court for inspection.

22. The court may examine on oath the town clerk, overseers, vestry clerks, and collectors, and any claimant, objector, respondent, or witness.

23. The court shall, on the hearing in open court, determine on the validity of all claims and objections.

24. The mayor shall, in open court, write his initials against each name inserted or expunged, and against any part of the lists in which a mistake has been corrected or omission supplied, and shall sign his name to every page of the lists so revised.

25. The mayor may adjourn the court from time to time, so that no adjourned court be held after the fifteenth of October.

PART II.

Rules as to Nomination in Elections of Councillors.

[The nomination of candidates for the office of councillor is to be conducted in accordance with the rules in this Part. Section 55, *ante*. These rules apply also to the nomination of elective auditors. Section 62 (6). Non-compliance with the rules does not invalidate an election if it has been conducted in accordance with the principles laid down in the body of the Act. Section 72.

Parts II. and III. of this Schedule are made applicable to county councils by s. 75 of the Local Government Act, 1888. In applying the rules in this schedule to county council elections, " county electors " must be substituted for " burgesses " and " electoral division " for " ward."]

1. Every candidate for the office of councillor must be nominated in writing.

Writing includes print. Section 7 (1). For the prescribed form of nomination paper, see Schedule 8, Form I., p. 186.

2. The writing must be subscribed by two burgesses of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

The burgesses who subscribe a nomination paper must be enrolled in the burgess roll or, in the case of a ward election, the ward roll. Section 51.

A nominator's ordinary signature is sufficient. Thus the use of the initials only of his Christian names will not render the nomination invalid. *Bowden* v. *Besley*, (1888) 21 Q. B. D. 309; 57 L. J. Q. B. 473; 59 L. T. 219; 36 W. R. 889; 52 J. P. 536; 4 T. L. R. 590. So where a nominator whose name appeared in the register as James Sykes signed a nomination paper with his ordinary signature, James Sykes junr., it was held that the requirements of the Act had been complied with. *Gledhill* v. *Crowther*, (1889) 23 Q. B. D. 136; 58 L. J. Q. B. 327; 60 L. T. 866; 53 J. P. 677. The names of the candidate, however, should be given in full. See r. 5.

Where an assenting burgess signed a nomination paper with his full name, Charles Arthur Burman, but his name had by mistake been entered on the burgess roll as Charles Burman only, it was held that the nomination was invalid. *Moorhouse* v. *Linney*, *ante*, p. 160. See, however, *Harding* v. *Cornwall*, *ibid.*

The form of nomination paper prescribed by Schedule 8 requires the number of a nominator on the burgess roll to be stated. The insertion of a wrong number has been

held to invalidate a nomination paper. *Gothard* v. *Clarke*, (1880) 5 C. P. D. 253; 49 L. J. Q. B. 474; 42 L. T. 776; 29 W. R. 102; 44 J. P. 587.

As to the effect of misnomer or inaccurate description of any person or place in a nomination paper, see the note to s. 241, *ante*. See also s. 72, *ante*.

Where a nomination paper which had been duly filled up was altered after it had been delivered to the town clerk by striking out the name of the proposer (who was not qualified), and substituting the name of another burgess, the seconder and the assenting burgesses not being present when the alteration was made, the nomination was held to be invalid. *Harmon* v. *Park*, (1881) 7 Q. B. D. 369; 50 L. J. Q. B. 775; 45 L. T. 174; 45 J. P. 714. But a nomination paper is not necessarily bad because it is signed by the proposer and seconder before the name of the candidate is filled in. *Cox* v. *Davies*, [1898] 2 Q. B. 202; 67 L. J. Q. B. 925; 14 T. L. R. 427.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

Where there were four vacancies to be filled, and a burgess signed five nomination papers, it was held that the four nomination papers which were first delivered to the town clerk were valid, and the fifth was invalid. *Burgoyne* v. *Collins*, (1882) 8 Q. B. D. 450; 51 L. J. Q. B. 335; 30 W. R. 923; 46 J. P. 390.

A person may not sign more than one nomination paper for the same candidate. Rule 10, *post*. Nor may he subscribe a nomination paper in or for more than one ward. Section 51 (2).

County Councils.—In a county council election there can only be one vacancy to be filled, for only one county councillor is elected for each electoral division. Local Government Act, 1888, s. 2 (2) (*e*), *post*.

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

A candidate must not only be enrolled, but must be entitled to be enrolled. Section 11 (2).

The burgess roll here referred to is the roll which will be in force on the day of the election. Rule 18, *post*.

As to the non-resident list, see s. 49.

A person who is disqualified for election by reason of his interest in a contract made with the borough council is disqualified also for nomination. *Harford* v. *Linskey*, *ante*, p. 60.

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

The Christian names of the candidate should be stated in full. It is still an open question whether the use of initials in this case is such a misnomer as is remedied by s. 241, *ante*. See *Mather* v. *Brown* and *Bowden* v. *Besley*, cited in the note to that section. The use of such a well-known abbreviation as Wm. for William has been held to be a sufficient statement of the name. *Henry* v. *Armitage*, (1883) 12 Q. B. D. 257; 53 L. J. Q. B. 111; 50 L. T. 4; 32 W. R. 192; 48 J. P. 424. Where a candidate whose name was Miller was called in the nomination paper Millar, because his name was so spelled in the burgess roll, it was held that this was a sufficient statement of his name. *Miller* v. *Everton*, (1895) 64 L. J. Q. B. 692; 72 L. T. 838; 59 J. P. 358; 11 T. L. R. 364.

The candidate's abode is his residence, not his place of business. *Reg.* v. *Hammond*, (1852) 17 Q. B. 772; 21 L. J. Q. B. 153; 16 Jur. 194. Where the name of the street in which the candidate lives has recently been changed, a nomination paper is not necessarily bad because it describes his abode by a different name from that which appears in the burgess roll. See *Soper* v. *Mayor of Basingstoke*, (1877) 2 C. P. D. 440; 46 L. J. C. P. 422; 36 L. T. 468; 25 W. R. 693; 41 J. P. 535. The omission of the candidate's description is not a defect which is cured by s. 241. See *Reg.* v. *Tugwell*, *ante*, p. 160.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

County Councils.—In the case of a county council election the duties of the town clerk in connection with the election are to be discharged by the returning officer appointed by the council, except where the election is held for a borough division. See the note to s. 53, *ante*.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least

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before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

The nomination paper should be delivered by the candidate or his proposer or seconder personally. Delivery by an agent has been held to be insufficient. *Monks* v. *Jackson*, (1876) 1 C. P. D. 683; 46 L. J. Q. B. 162; 35 L. T. 95; 41 J. P. 231. That case, however, was decided under 38 & 39 Vict. c. 40, s. 1 (3), which required that the nomination paper should be delivered by the candidate *himself* or his proposer or seconder. See Schedule 8, Part II. Form H, paragraph 6, *post*, p. 186.

Seven days at least means seven clear days, exclusive of the day of delivery and the day of election. See the note to s. 230. The hour is to be reckoned according to Greenwich time. 43 & 44 Vict. c. 9. As to the calculation of the seven days where the 1st of November is a Sunday, see the note to s. 54, *ante*.

Where a nomination paper which had been duly filled up and delivered within the prescribed time was afterwards taken back for the purpose of correcting a supposed insufficiency, and was corrected and returned on the following day, it was held that the nomination paper had been duly delivered the first time, and that the nomination was not affected by what was done afterwards. *Howes* v. *Turner*, (1876) 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58; 40 J. P. 680.

County Councils.—In the case of a county council election, some place fixed by the returning officer is to be substituted in this rule for the town clerk's office, except where the election is held for a borough division (see the note to s. 53, *ante*). If the electoral division is the whole or part of an urban district, the place so fixed must be in that district, and in any other case it must be in the electoral division or in an adjoining electoral division. Local Government Act, 1888, s. 75 (7), *post*.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

County Councils.—See the note to r. 6, *ante*.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

As to the nature of the objections which the mayor has jurisdiction to decide, see the notes to r. 14.

It is not the duty of a returning officer to look out for objections in fact to nomination papers when handed in, much less to call the attention of a rival candidate to them. *Reg.* v. *Taylor*, (1895) 59 J. P. 393.

County Councils.—The duties of the mayor under this schedule are to be performed in the case of a county council election by the returning officer appointed by the county council or his deputy except where the division for which the election is held is wholly comprised in a borough. See the note to s. 53, *ante*. The place for hearing objections to nomination papers is to be fixed by the returning officer in the same way as the place at which nomination papers are to be delivered. See the note to r. 7, *ante*. Local Government Act, 1888, s. 75 (7). Schools and public rooms which may be used free of charge for the purpose of taking the poll under s. 6 of the Ballot Act, 1872, *post*, may also be used free of charge for hearing objections to nomination papers at a county council election, though no such right is given in the case of a municipal election. Local Government Act, 1888, s. 75 (16) (*g*), *post*.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

This rule applies only where a person signs more than one nomination paper for the same candidate; it does not conflict with r. 3, under which a burgess may subscribe as many nomination papers as there are vacancies to be filled. *Line* v. *Warren*, (1884) 14 Q. B. D. 548; 54 L. J. Q. B. 146; 52 L. T. 258; 48 J. P. 454; 1 T. L. R. 158.

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

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13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

As to the time appointed for the attendance of the mayor, see. r. 9.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return.

The mayor is not empowered to deal with every kind of objection that may be raised to a nomination paper. Thus he has no jurisdiction to decide an objection that the candidate is disqualified for election, which ought to be raised by an election petition under s. 87. *Pritchard* v. *Mayor of Bangor*, (1888) 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564. The schedule rather points to his disposing of formal objections arising upon the face of the nomination paper, and making inquiry as to whether the nominators have their names on the burgess roll, and whether the paper is in statutory shape. *Ibid.*, per Lord Watson; and see *Howes* v. *Turner*, *infra*. But the mayor would be entitled to reject a nomination paper which was on the face of it a mere abuse of the right of nomination or an obvious unreality, such as one which purported to nominate a deceased sovereign. *Harford* v. *Linskey*, [1899] 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 47 W. R. 653; 63 J. P. 263; 15 T. L. R. 306.

The mayor has no power to deal with an objection that a nomination paper was not delivered within the time prescribed by r. 7. *Howes* v. *Turner*, (1876) 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58; 40 J. P. 680. But he can entertain an objection to a nomination paper on the ground that it was not delivered by the candidate or by his proposer or seconder personally. *Monks* v. *Jackson*, (1876) 1 C. P. D. 683; 46 L. J. Q. B. 162; 35 L. T. 95; 41 J. P. 231. See r. 7, *ante*.

If the mayor disallows an objection which he has no jurisdiction to entertain, his decision may be questioned by an election petition. *Howes* v. *Turner*, *supra*.

Where an objection to a nomination paper has been improperly allowed, the election may be questioned by a petition under s. 87 (1), on the ground that the respondent was not duly elected by a majority of lawful votes, because the votes might have been given differently if the objection had not been allowed. *Budge* v. *Andrews*, (1878) 3 C. P. D. 510; 47 L. J. C. P. 586; 39 L. T. 166; 42 J. P. 744.

Where the mayor has given his decision *bonâ fide* with respect to an objection to a nomination paper, he ought not to be made a respondent to an election petition questioning the election. *Harmon* v. *Park*, *ante*, p. 175. See the notes to ss. 87 and 88, *ante*, as to election petitions.

If the number of valid nominations does not exceed that of the vacancies, it is the duty of the mayor under s. 56, *ante*, to declare the persons validly nominated to be elected. See *Monks* v. *Jackson*, *supra*.

15. The town clerk shall at least four days before the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall, and in the case of a ward election, in some conspicuous place in the ward.

As to the mode of reckoning the four days, see the note to r. 7; and as to the mode of fixing documents on the town hall, see s. 232, *ante*.

County Councils.—In the case of a county council election the duties of the town clerk in connection with the election are to be discharged by the returning officer appointed by the county council, except where the election is held for an electoral division which is wholly comprised within a borough. See the note to s. 53, *ante*.

In relation to the election of county councillors, the day of nomination is to be deemed to be the day on which the names of the persons nominated are fixed on the town half or other conspicuous place in accordance with this rule. Local Government Act, 1888, s. 100, *post*.

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

One month means a calendar month. Interpretation Act, 1889, s. 3, *post*, p. 476.

For a case where the election of a councillor was held on petition to be void under this rule, see *Brown* v. *Benn*, (1889) 53 J. P. 167; 5 T. L. R. 247. In that case notice had been given to the electors that votes given for the respondent would be thrown away, and the other candidate was declared to have been elected. In a later case where no such notice had been given to the electors, it was held that the election was void, but that the petitioner who was the only other candidate was not entitled to claim the seat, the respondent's name

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having been allowed to go before the voters as that of a person for whom votes could be given. The Court dealt with the case as being one of disqualification for election and followed the decision in *Hobbs* v. *Morey*, *ante*. p. 60. *Boyce* v. *White*, (1905) 92 L. T. 240; 53 W. R. 430; 3 L. G. R. 787; 21 T. L. R. 244.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

The hour is to be reckoned according to Greenwich time. 43 & 44 Vict. c. 9, s. 1.

County Councils.—As to the place at which the notice is to be delivered in the case of a county council election, see the note to r. 7, *ante*.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

See *Budge* v. *Andrews*, *ante*, p. 177. The provisions of the Act relating to proceedings preliminary to election are contained in Part III., *ante*, ss. 44 *et seq*.

PART III.

Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

As to the application of the Ballot Act to municipal elections, see s. 58, *ante*.

The provisions referred to in this rule are those contained in ss. 2, 6, and 7 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), *post*, p. 258. The corresponding provisions of the Act of 1882 with respect to the voting of a returning officer and the right to vote of persons who are enrolled in the burgess roll are contained in ss. 58 (5) and 51, *ante*; but this Act does not contain any provision corresponding to s. 6 of the Ballot Act with respect to the use of a room for taking a poll.

Rules 16 and 19 in the First Schedule to the Ballot Act, *post*, p. 268, are replaced by rules 4 and 2 of this Part of the Third Schedule to the Act of 1882.

County Councils.—Section 6 of the Ballot Act, 1872, *post*, which authorizes the use of schools and public rooms free of charge for the purpose of taking the poll, is made applicable in the case of county council elections by s. 75 (16) (*g*) of the Local Government Act, 1888, which also authorizes the use of such room free of charge for hearing objections to nomination papers and for counting the votes at such elections.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

As to the mode of calculating the four days, see the note to Schedule 3, Part II., r. 7, *ante*.

In the case of ward elections a separate notice is not required for each ward. See s. 65, *ante*.

County Councils.—As to the person by whom the duties imposed upon the mayor by this schedule are to be discharged in the case of a county council election, see the note to Part II., r. 9 of this schedule, *ante*.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

As to the things required to be provided by the returning officer, see the Ballot Act, 1872, s. 8, and Schedule 1, rr. 15 and 20, *post*, pp. 262, 267, 268.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election. Schedule 3, Part III.

5. All expenses of the election shall be defrayed in manner by this Act provided.

See s. 140, *ante*, and Schedule 5, Part II., rr. 1, 10, and 12, *post*.

County Councils.—As to the mode in which the expenses of county council elections are to be defrayed, see s. 75 (17) (18) and (19) of the Local Government Act, 1888, *post*.

6. No return shall be made to the clerk of the Crown in Chancery.

See s. 2 of the Ballot Act, 1872, *post*, p. 258.

Part IV.

Enactments which are to revive on the Expiration of the Ballot Act.

[See s. 76, *ante*, and the note thereto. Revising assessors are no longer elected. See the note to s. 29, *ante*.]

With respect to a contested election of councillors, elective auditors, or revising assessors, the following rules shall be observed:

1. The returning officer shall cause the requisite polling booths to be erected, or the requisite rooms to be hired and used as polling booths.

2. The returning officer shall, at least two days before the day of election, give public notice of the situation, division, and allotment of the different booths.

"At least two days" means two clear days. See the note to Schedule 3, Part II., r. 7, *ante*.

3. Each booth shall be divided into compartments, and the returning officer shall appoint a clerk to take the poll at each compartment.

4. There shall be affixed on each booth a notice specifying the part of the borough for which it is allotted.

5. No person shall be admitted to vote at any booth except that allotted for the part in which his qualifying property is situate, unless no booth is allotted for that part, in which case he may vote at any booth.

6. If there is more than one booth, the returning officer may appoint a deputy to preside at each booth.

7. A burgess may vote by delivering to the returning officer or his deputy a voting paper containing the surnames and other names of the persons for whom he votes, with their abodes and descriptions. The voting paper must be signed by the burgess, and must state the qualifying property in respect of which he votes.

8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of his delivering in his voting paper, but not afterwards, the following question:

"Are you the person whose name is signed as [*A.B.*] to the voting paper now delivered in by you?"

The vote of a person required to answer this question shall not be received until he has answered it. If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

Further questions may be asked under s. 59, *ante*.

9. The returning officer shall, at the close of the poll, examine the voting papers, and shall publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one after the day of election.

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search.

As to the right of inspection, see s. 233, *ante*.

Schedule 4.

THE FOURTH SCHEDULE.

FEES AND REMUNERATION.

[This Schedule does not apply to county councils.]

The following fees and remuneration shall be payable:—

1. *Commissioner for Division into Wards or Alteration of Wards.*

[See s. 30, *ante*.]

Five guineas for every day he is employed, over and above his travelling and other expenses.

2. *Assistant Recorder and Officers of Second Court of Quarter Sessions.*

[See s. 168, *ante*.]

For every day not exceeding two, or, by resolution of the council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder	Ten guineas.
To an assistant clerk of the peace	Two guineas.
To an additional crier	Half a guinea.

The remuneration is payable on a certificate from the recorder showing the amount due.

3. *Coroner.*

[See s. 171, *ante*.]

To the borough coroner (subject to the provisions of any other Act relating to coroners)—	
For every inquisition which he duly takes in the borough . and	Twenty shillings.
For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition	Ninepence.

4. *Special Constables.*

[See s. 196, *ante*.]

To a special constable, for every day during which he is called out to act as such	Three shillings and sixpence.

THE FIFTH SCHEDULE.

PAYMENTS OUT OF THE BOROUGH FUND.

[See s. 140, *ante*.]

[This Schedule does not apply to county councils.]

PART I.

Payments which may be made without Order.

1. The remuneration (if any) of the mayor, of the recorder (if any) in his capacity either of recorder or of judge of a borough civil court, of the stipendiary magistrate (if any), of the town clerk, of the treasurer, of the clerk of the peace when paid by salary, of every other officer appointed by the council, and of the clerk to the justices.

As to the remuneration of the mayor, see s. 15 (4); of the recorder, ss. 163 and 175; of the stipendiary magistrate, s. 161 (4); of the clerk of the peace, s. 164 (5); of the town clerk, treasurer, and other officers, s. 20; and of the clerk to the justices, note (*a*) to s. 159.

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2. The remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition.

See s. 101.

3. The remuneration certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional crier.

See s. 168 (8).

Part II.

Payments which may not be made without Order.

1. The expenses incurred by overseers, and by the town clerk and other municipal authorities, in relation to the enrolment of burgesses and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under section thirty of the Parliamentary and Municipal Registration Act, 1878. 13 & 14 Vict. c. 42, s. 3. 41 & 42 Vict. c. 26.

See this section, *post*, p. 341. As to the enrolment of burgesses and the holding of municipal elections, see ss. 44—59, *ante*.

County Councils.—As to the costs of county council elections, see s. 75 (17)—(20) of the Local Government Act, 1888, *post*.

2. The expenses incurred by the town clerk in providing accommodation for an election court held under this Act.

See s. 99.

3. The expenses of providing, furnishing, maintaining, or improving the corporate buildings, including the justices room (if any), and the necessary expenses of that room.

As to the provision of a justices room, see s. 160.

4. The fees payable to the clerk of the peace if not paid by salary, and under this Act to the borough coroner.

See ss. 164 and 171.

5. The payments to be made under this Act to or in respect of the borough police and to any special constable, including the following payments (namely):

(a) Such salaries, wages, and allowances to the borough constables, and at such periods, as the watch committee, with the approbation of the council, direct; and

(b) Such further sum as may be awarded by the watch committee, subject to the approbation of the council, or by the court of quarter or petty sessions, to a borough constable as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of his duty, [*or as may be awarded by the watch committee, subject to the approbation of the council, to a borough constable, as an allowance to him when disabled by bodily injury, or worn out by length of service*;] and

(c) Any extraordinary expenses which a borough constable appears to have necessarily incurred in apprehending offenders, and executing the orders of any justice having jurisdiction in the borough, such expenses having been first examined and approved by that justice; and

(d) All other charges and expenses which the watch committee, subject to the approbation of the council, direct to be paid for the purposes of the borough constabulary force.

As to the borough police, see ss. 190—196.

The last clause of paragraph (b) has been repealed by s. 36 of the Police Act, 1890 (53 & 54 Vict. c. 45), and is replaced by the provisions of Part I. of that Act, *post*, p. 486.

The council are empowered by s. 226 (3), *ante*, to pay out of the borough fund or borough rate all or any part of any sums payable by a member of the borough police force in or in consequence of an action, prosecution, or other proceeding instituted against him for any act done in pursuance or execution or intended execution of the Act, or in respect of any alleged neglect or default in the execution of the Act, whether in respect of costs, charges, expenses, damages, fines, or otherwise. But they are not empowered to indemnify a member of that force against costs incurred in discharging duties which are outside the functions of the council and their officers. Thus they cannot justify under this rule the payment of the costs incurred by the chief constable in opposing by their direction an appeal against the refusal of justices to renew a publican's licence, because the administration of the licensing laws is not entrusted to them. *Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404; 15 T. L. R. 370.

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6. The costs and expenses payable by the corporation in respect of the prosecution, maintenance, conveyance, transport, or punishment of offenders.

See s. 151.

7. All sums payable under this Act by the corporation of the borough to the treasurer of a county.

See ss. 151—153.

8. The expenses of and incidental to the division of a borough into wards or the alteration of wards, including the remuneration of the commissioner appointed for the purposes of the division or alteration.

See s. 30.

9. Such remuneration to the clerk to any commissioners for taxes in respect of making copies of assessments as the council think reasonable.

See s. 144 (7).

10. The expenses of and relating to a charter of incorporation for a borough, and of and relating to all elections acts and proceedings under the charter.

See ss. 210—218.

11. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

See the notes to ss. 140 and 143.

12. All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect.

A municipal corporation are not justified under this rule in applying the borough fund, at any rate where there is no surplus, in payment of the costs incurred by the chief constable under an order of the council in opposing the renewal of a publican's licence at quarter sessions, because the administration of the licensing laws is outside the functions of the borough council and of the chief constable acting as their officer. *Tynemouth Corporation*, v. *Attorney-General*, *supra*.

The Borough Funds Act, 1872 (35 & 36 Vict. c. 91), empowers a borough council, subject to certain restrictions, to pay out of the borough fund or borough rate expenses incurred by them in promoting or opposing bills in Parliament or in taking legal proceedings for the promotion or protection of the interests of the inhabitants of their borough, which are not authorized by the provisions of this Act. See s. 4 of that Act and notes thereto, *post*, p. 283. Apart from the provisions of that Act, a municipal corporation have power, either under this rule or under the general law applicable to trustees, to defray out of the borough fund or borough rate expenses incurred by them in defending themselves against any attack, whether made by a bill in Parliament or otherwise, against their existence as a corporation or against any of their property, rights, or privileges. *Attorney-General* v. *Mayor of Brecon*, (1878) 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. 52; 27 W. R. 332. In that case the corporation, who had certain powers of control over slaughter-houses and markets in their borough under a local Act, were held to be entitled to pay out of the borough fund (which had no surplus) the expenses of opposing a bill promoted by a private company which sought to interfere with the corporation's powers of control, although no attack was made upon any property belonging to the corporation. See also the note to s. 8 of the Borough Funds Act, 1872, *post*, as to the costs of promoting or opposing provisional orders made under the Local Government Act, 1888.

On the other hand, it was held that where there was no surplus the borough fund could not be applied to the payment of the expenses incurred by the corporation in opposing a bill introduced by a waterworks company relating to the supply of water to the town, or in opposing regulations to be observed by the consumers. *Reg.* v. *Mayor of Sheffield*, (1871) L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; 24 L. T. (N. S.) 659; 19 W. R. 1159. Such expenses can now, however, be paid out of the borough fund under the provisions of the Borough Funds Act, 1872, *post*, if the requirements of that Act have been complied with.

A municipal corporation who were large consumers of gas supplied by a private company were restrained by injunction from applying the borough fund to the payment of the costs of opposing a bill promoted by the gas company, where the requirements of the Borough Funds Act had not been complied with and there was no surplus of the borough fund. The fact that the bill sought to alter the price of the gas supplied was held not to constitute an attack upon the rights, privileges, or duties of the corporation, so as to justify them in paying such expenses out of the borough fund. *Attorney-General* v. *Swansea Corporation*, [1898] 1 Ch. 602; 67 L. J. Ch. 356; 78 L. T. 412; 46 W. R. 534; 62 J. P. 408; 14 T. L. R. 322.

See also *Attorney-General* v. *Camberwell Vestry*, (1894) 71 L. T. 478, where an injunction was granted to restrain the defendants from contributing out of the rates to the costs of

obtaining a decision as to the right of a water company to charge for water supplied to fixed baths; and *Attorney-General* v. *Rickmansworth Urban District Council*, (1902) 86 L. T. 521; 66 J. P. 410; 18 T. L. R. 481, where the defendants were restrained from opposing a bill in Parliament so as to throw the expenses on the rates until the consent of the ratepayers had been obtained.

Where a municipality had incurred costs in opposing a bill which sought to incorporate their district into that of a neighbouring city, it was held that they were entitled to defend themselves, but that they could not charge upon the rates levied by them under the Public Health Act the expenses of resisting an attack made upon their existence as a corporate body. *Leith Council* v. *Leith Harbour Commissioners*, [1899] A. C. 508; 68 L. J. P. C. 109; 81 L. T. 98; 15 T. L. R. 492.

Where a municipal corporation had obtained an order from the Board of Trade which conferred upon them the power of regulating an oyster fishery but did not empower them to acquire land, it was held that they were not authorized by this Act to take a lease of the foreshore and pay the rent out of the borough fund, but that they could do so under the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), if the acquisition of the leasehold would enable them the better to carry out the purposes of their order. *Truro Corporation* v. *Rowe*, [1901] 2 K. B. 870; 70 L. J. K. B. 1026; 85 L. T. 422; 50 W. R. 151; 65 J. P. 806; 17 T. L. R. 773. The decision in that case was subsequently varied by the Court of Appeal, but the judgment of that Court did not deal with this point. [1902] 2 K. B. 709; 71 L. J. K. B. 974; 87 L. T. 386; 51 W. R. 68; 66 J. P. 821; 18 T. L. R. 820.

Where a corporation had statutory power to carry goods by their tramways, it was held that they were empowered to collect and deliver parcels for their tramways, this being incidental to the tramway business, but that they had no power to carry on business as carriers apart from their tramways, and that they could not as a municipal corporation expend any part of the city fund for the purpose of carrying on such a business. *Attorney-General* v. *Manchester Corporation*, [1906] 1 Ch. 643; 75 L. J. Ch. 330; 54 W. R. 307; 70 J. P. 201; 4 L. G. R. 365; 22 T. L. R. 261.

A town council have no power to make payments out of the borough fund for a gold chain and badge for the mayor, *Attorney-General* v. *Batley*, (1872) 26 L. T. 392; nor for providing refreshments for the jury of a manor of which they have become by purchase the lords, *Reg.* v. *Bideford*, (1883) 47 J. P. 756; see also *Attorney-General* v. *Bermondsey Vestry*, (1883) 23 Ch. D. 60; 52 L. J. Ch. 567; 48 L. T. 445; 31 W. R. 463; 47 J. P. 453; nor for the travelling expenses incurred by members of the council in the performance of their ordinary duties, see *R.* v. *Dolby*, (1902) 87 L. T. 27; 66 J. P. 521; 18 T. L. R. 434. But they are entitled to make a reasonable addition to the mayor's salary in view of an increase in his expenditure caused by the celebration of events of national importance, such as Queen Victoria's jubilee or the marriage of the Duke of York. See *Attorney-General* v. *Mayor of Blackburn*, and *Attorney-General* v. *Mayor of Cardiff*, cited in note (c) to s. 15, *ante*. The expense of providing a band of music cannot be paid out of the borough fund unless such payment is sanctioned by a local Act of Parliament; but this can now be paid out of the general district rate under 7 Edw. 7, c. 53, s. 76. Expenses incurred by the council of a borough in the maintenance or management of an inclosed garden or ornamental ground under 26 & 27 Vict. c. 13, are by s. 3 of that Act, as amended by s. 242 of this Act, to be deemed to be expenses necessarily incurred by them in carrying this Act into execution.

The following cases decided under the similar provision in s. 92 of the Municipal Corporations Act, 1835, may also be referred to:—

The costs of legal proceedings relating to the rights or duties of the council may be paid out of the borough fund, *e.g.*, the costs of a prosecution for an assault on the mayor while acting in the discharge of his duties, *Reg.* v. *Mayor of Lichfield*, (1843) 4 Q. B. 893; 12 L. J. Q. B. 308; 7 Jur. 670; Dav. & M. 491; the costs of resisting a claim for compensation by a town clerk who had been dismissed by the council, *Reg.* v. *Mayor of Lichfield*, (1847) 10 Q. B. 534; 16 L. J. Q. B. 333; 11 Jur. 888; or the costs of resisting an application for a *mandamus* to hold a new court for the revision of the lists of voters, *Lewis* v. *Mayor of Rochester*, (1860) 9 C. B. (N. S.) 401; 30 L. J. C. P. 169; 3 L. T. (N. S.) 300; 9 W. R. 100; 7 Jur. (N. S.) 680. On the other hand, the council cannot pay the costs of legal proceedings in which the interests of the corporation are not involved, such as a *quo warranto* questioning the election of individual members of the council, or a *mandamus* to the mayor to receive a person's vote at an election of councillors. *Reg.* v. *Mayor of Bridgewater*, (1839) 10 A. & E. 281; 2 P. &. D. 558; *Reg.* v. *Mayor of Leeds*, (1834) 4 Q. B. 796; 12 L. J. Q. B. 369; 7 Jur. 669; Dav. & M. 143. Payment of the costs of promoting a bill for the improvement of a river flowing through the borough was held not to be authorized where there was no surplus of the borough fund. *Attorney-General* v. *Mayor of Norwich*, (1851) 21 L. J. Ch. 139. Fees payable to the justices' clerk in respect of proceedings taken by the borough police, which could not be recovered from the persons against whom the proceedings were taken, were held to be payable out of the borough fund. *Reg.* v. *Mayor of Gloucester*, (1844) 5 Q. B. 862; *Reddish* v. *Hitchinor*, (1879) 48 L. J. M. C. 31; 40 L. T. 65; 43 J. P. 41. A corporation were held to be justified in paying out of the

Schedule 5, Part II.

borough fund the cost of repairs to a pew in the parish church which was occupied by the members of the borough council. *Reg.* v. *Mayor of Warwick*, (1846) 8 Q. B. 926; 15 L. J. Q. B. 306.

As to the power of the High Court to disallow an order of the council for payment out of the borough fund on *certiorari*, see s. 141 and the notes to that section, *ante*.

It is to be observed that s. 140 only imposes restrictions on the application of the borough fund. A statutory corporation can only do such acts as are authorized by the statute creating it; but a municipal corporation, which is incorporated by charter, can (speaking generally) do anything that an ordinary individual can do. They may not, however, apply their borough fund to any purposes which are not authorized by this Act. *Attorney-General* v. *Manchester Corporation*, *ante*, p. 183. See also *Attorney-General* v. *Mayor of Newcastle-upon-Tyne*, *ante*, p. 107.

A contract purporting to bind a corporation not to use powers which have been conferred upon them by statute is void. *Ayr Harbour Trustees* v. *Oswald*, (1883) 8 A. C. 623. See also *Stourcliffe Estate Co.* v. *Bournemouth Corporation*, (1910) 102 L. T. 311; 74 J. P. 162; 26 T. L. R. 354; affirmed on appeal, (1910) 26 T. L. R. 450.

THE SIXTH SCHEDULE.

[See s. 188.]

COUNTIES TO WHICH CERTAIN BOROUGHS ARE TO BE CONSIDERED ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

Berwick-upon-Tweed	Northumberland.
Bristol	Gloucestershire.
Chester	Cheshire.
Exeter	Devonshire.
Kingston-upon-Hull	Yorkshire.
Newcastle-upon-Tyne	Northumberland.

THE SEVENTH SCHEDULE.

[See s. 214.]

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the London Gazette, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

Schedule 8, Part I.

THE EIGHTH SCHEDULE.

FORMS.

[These forms or forms to the like effect, varied as circumstances require, may be used and are to be sufficient in law (s. 240). As to mistakes in the use of the forms, see s. 72: and as to misnomer and inaccurate description, s. 241. As to the application of these forms to county councils, see the note to s. 240, *ante*.]

PART I.—DECLARATIONS ON ACCEPTING OFFICE.

FORM A.

[See s. 35.]

Form of Declaration on Acceptance of Corporate Office.

I, *A.B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

The office of revising assessor is now obsolete. See the note to s. 29.

FORM B.

[See ss. 157 (2) and 163 (4).]

Declaration by Recorder or Borough Justice.

I, *A.B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of according to the best of my judgment and ability.

PART II.—FORMS RELATING TO ELECTIONS.

[The burgess lists are now made out and revised in accordance with the provisions of the Registration Acts. See note (*b*) to s. 44, *ante*. Forms C to G inclusive are now superseded by those contained in the Registration Order, 1895, *post*, p. 574.]

* * * * * * *

FORM H.

[See s. 54. As to revising assessors, see the note to s. 29, *ante*.]

Notice.

Borough of . Election of [Councillors, *or* elective Auditors, *or* revising Assessors *as the case may be*] for the [Ward or several Wards of the] Borough.

Take Notice,

1. That an election of [*here insert the number of councillors, auditors, or assessors, as the case may be*] for the [ward or several wards of the] said borough will be held on the day of .

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated with his abode and description, and may be in the following form, or to the like effect:

(Set out Form I.)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [*or* ward], but no more.

Schedule 8, Part II.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of day the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of 18 .

A.B., Town Clerk.

FORM I.

[See Schedule 3, Part II., rr. 1—5.]

Nomination Paper.

Borough of . Election of Councillors, [elective Auditors, or revising Assessors] for Ward in the said Borough [*or* the said Borough] to be held on the day of 18 .

WE, the undersigned, being respectively burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A. B. C. D.	

WE, the undersigned, being respectively burgesses, hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this day of 18 .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

Schedule 8, Part II.

FORM K.

[See s. 62, *ante*. This form is now applicable only to the election of auditors. Revising assessors are no longer appointed. See the note to s. 29, *ante*. The form of ballot paper to be used at an election of councillors is that contained in the Second Schedule to the Ballot Act, 1872, *post*, p. 276.]

BALLOT PAPER.

Form of Front of Ballot Paper.

For Elective Auditors.

Counterfoil. No.			
1	CADE. (John Cade, of 22, Wellclose Place, Accountant.)		
2	JOHNSON. (Charles Johnson, of 7, Albion Street, Gentleman.)		
3	THOMSON. (William Thomson, of 14, Queen Street, Silversmith.)		

Note.—The counterfoil is to have a number to correspond with that on the back of the ballot paper.

For Revising Assessor.

1	BACON. (Charles Bacon, of 29, New Street, Solicitor.)	
2	BYRON. (James Byron, of 45, George Street, Commission Agent.)	
3	WILSON. (George Wilson, of 22, Hanover Square, Gentleman.)	

Form of Back of Ballot Paper.

No. . Election of elective auditors [*or* revising assessors] for the borough of to be held on the day of 18 .

The number on the back of the ballot paper is to correspond with that on the counterfoil.

PART III.—FORMS RELATING TO WORKING MEN'S DWELLINGS.

[See s. 111.]

FORM L.

Form of Grant by Corporation.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Grant No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to them by *A.B.* of hereby grant to the said *A.B.* (herein referred to as the grantee), and his heirs, the site following (that is to say) [*insert description*] with the appurtenances, subject to the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's dwelling

Schedule 8, Part III.

(and no more) according to the plan and specification deposited in the office of the town clerk, numbered , and under the superintendence and to the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building, shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

FORM M.

Form of Transfer of Grant.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Grant No. .)

A.B. of , by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C.D.* of , hereby grants and transfers to the said *C.D.* and his heirs the site comprised in the within-written * grant [*or* the grant No. under the said Act, dated the day of 187 †] with the appurtenances and with the dwelling and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

*[*In case of transfer by indorsement.*]

†[*In case of transfer by separate deed.*]

In witness whereof, &c., this day of 18 .

A.B. (L.S.)

FORM N.

Form of Lease by Corporation.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Lease No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A.B.* of and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed hereby lease to the said *A.B.* (herein referred to as the lessee), his executors and administrators, the site following (that is to say) [*insert description*] with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the day of , at the yearly rent (clear of all deductions) of , payable by two equal half-yearly payments on the day of and the day of in every year, the first thereof to be made on the day of , and the last thereof to be made in advance on the day of next before the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half year up to re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):

1. The lessee shall build on the site one working-man's or working-men's dwelling

(and no more) according to the plan and specification deposited in the office of the town clerk, and numbered , under the superintendence and to the satisfaction of the corporation. Schedule 8, Part III.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts and, in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)
A.B. (L.S.)

FORM O.

Form of Assignment of Lease.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Lease No. .)

A.B. of (herein referred to as the assignor) by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C.D.* of , hereby assigns to the said *C.D.* (herein referred to as the assignee,) his executors and administrators, the site comprised in the within-written lease * [*or* the lease No. under the said Act, dated the day of 187 †], with the appurtenances, and with the dwelling and other buildings thereon, for the residue of the term of years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

*[*In case of assignment by indorsement.*]

†[*In case of assignment by separate deed.*]

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this day of 187 .

A.B. (L.S.)
C.D. (L.S.)

PART IV.—FORMS RELATING TO BOROUGH BRIDGES.

[See s. 119.]

FORM P.

Form of Mortgage.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Mortgage No. .

We, the mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the

Schedule 8, Part IV.

borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said *A.B.*, his executors, administrators, and assigns, from the day of the date hereof, until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of at [*place of payment*].

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

FORM Q.

Form of Transfer of Mortgage.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Transfer No. . (Mortgage No. .)

I *A.B.* of in consideration of the sum of paid to me by *C.D.* of , do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-mentioned Act, for securing the sum of and interest thereon at per centum per annum [*or, if the transfer is by indorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this day of , 187 .

A.B. (L.S.)

THE NINTH SCHEDULE.

[See s. 242.]

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.

General References.

2 & 3 Vict. c. 93.—An Act for the establishment of county and district constables by the authority of justices of the peace (section 24).

5 & 6 Vict. c. 109.—An Act for the appointment of parish constables (section 21).

9 & 10 Vict. c. 74.—An Act to encourage the establishment of public baths and wash-houses (section 1).

10 & 11 Vict. c. 62.—An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy (section 13).

12 & 13 Vict. c. 35.—An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament (section 2).

[Repealed by 42 & 43 Vict. c. 39, s. 3.]

12 & 13 Vict. c. 82.—An Act to relieve boroughs, in certain cases, from contribution to certain descriptions of county expenditure.

13 & 14 Vict. c. 20.—An Act to amend an Act of the fifth and sixth years of Her present Majesty for the appointment and payment of parish constables (section 7).

13 & 14 Vict. c. 105.—An Act for facilitating the union of liberties with the counties in which they are situate (section 10).

Schedule 9, Part I.

14 & 15 Vict. c. 28.—An Act for the well-ordering of common lodging-houses (section 2).

14 & 15 Vict. c. 34.—An Act to encourage the establishment of lodging-houses for the labouring classes (section 2).

[Repealed by 53 & 54 Vict. c. 70, s. 102.]

16 & 17 Vict. c. 73.—An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy, in case of need, of seafaring men employed in other public services (section 24).

16 & 17 Vict. c. 97.—The Lunatic Asylums Act, 1853 (section 9).

[Repealed by 53 & 54 Vict. c. 5, s. 342.]

17 & 18 Vict. c. 71.—An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts.

[Repealed by 46 & 47 Vict. c. 18, s. 26.]

17 & 18 Vict. c. 97.—An Act to make further provision for the burial of the dead in England beyond the limits of the metropolis (section 3).

17 & 18 Vict. c. 105.—The Militia Law Amendment Act, 1854 (section 11).

18 & 19 Vict. c. 57.—An Act further to amend the laws relating to the militia in England (section 7).

18 & 19 Vict. c. 121.—The Nuisances Removal Act for England, 1855.

[Repealed by 38 & 39 Vict. c. 55, s. 343, and 54 & 55 Vict. c. 76, s. 142.]

19 & 20 Vict. c. 69.—An Act to render more effectual the police in counties and boroughs in England and Wales.

20 & 21 Vict. c. 81.—An Act to amend the Burial Acts.

22 & 23 Vict. c. 40.—An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same (section 25).

23 & 24 Vict. c. 68.—An Act for the better management and control of the highways in South Wales.

25 & 26 Vict. c. 61.—An Act for the better management of highways in England.

26 & 27 Vict. c. 13.—An Act for the protection of certain garden or ornamental grounds in cities and boroughs.

26 & 27 Vict. c. 97.—The Stipendiary Magistrates Act, 1863 (section 2).

28 & 29 Vict. c. 126.—The Prison Act, 1865 (section 4).

30 & 31 Vict. c. 102.—The Representation of the People Act, 1867.

31 & 32 Vict. c. 22.—The Petty Sessions and Lock-up House Act, 1868 (section 3).

31 & 32 Vict. c. 46.—The Boundary Act, 1868 (First Schedule).

31 & 32 Vict. c. 58.—The Parliamentary Electors Registration Act, 1868.

31 & 32 Vict. c. 125.—The Parliamentary Elections Act, 1868 (sections 43 and 45).

31 & 32 Vict. c. 130.—The Artisans and Labourers Dwellings Act, 1868 (section 3).

[Repealed by 53 & 54 Vict. c. 70, s. 102.]

33 & 34 Vict. c. 75.—The Elementary Education Act, 1870 (section 3).

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A).

34 & 35 Vict. c. 56.—The Dogs Act, 1871 (Schedule).

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2).

35 & 36 Vict. c. 38.—The Infant Life Protection Act, 1872 (First Schedule).

[Repealed by 60 & 61 Vict. c. 57, s. 18.]

35 & 36 Vict. c. 91.—An Act to authorize the application of funds of municipal corporations and other governing bodies in certain cases.

38 & 39 Vict. c. 17.—The Explosives Act, 1875 (section 108).

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4).

38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 34).

39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37).

40 & 41 Vict. c. 21.—The Prison Act, 1877 (section 59).

41 & 42 Vict. c. 49.—The Weights and Measures Act, 1878 (Fourth Schedule).

Schedule 9, Part I.

41 & 42 Vict. c. 74.—The Contagious Diseases (Animals) Act, 1878 (sections 7 and 66).

[Repealed by 54 & 55 Vict. c. 76, s. 142, and 57 & 58 Vict. c. 57, s. 58.]

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38).

PART II.

Particular References.

14 & 15 Vict. c. 55.—An Act to amend the law relating to the expenses of prosecutions, and to make further provisions for the apprehension and trial of offenders in certain cases.

In section 24, for Schedule C to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870:

In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

The provision referred to is contained in s. 12 (1) (b), *ante*.

THE MUNICIPAL CORPORATIONS ACT, 1883.

(46 & 47 Vict. c. 18.)

An Act to make provision respecting certain Municipal Corporations and other Local Authorities not subject to the Municipal Corporation Act. [29th June, 1883.]

Whereas Commissioners were appointed by His late Majesty King William the Fourth (in this Act referred to as the Commissioners of 1834) to inquire into Municipal Corporations in England and Wales, and made reports respecting divers corporations, including most of those mentioned in the schedules to this Act:

And whereas the Municipal Corporation Acts consolidated and repealed by the Municipal Corporations Act, 1882, were passed and applied to most of the places mentioned in the above report, but not to those which are mentioned in the schedules to this Act:

And whereas Commissioners were appointed by Her Majesty to inquire into Municipal Corporations not subject to the Municipal Corporation Acts (in this Act referred to as the Commissioners of 1876), and have made reports to Her Majesty respecting the places mentioned in the schedules to this Act, and it is expedient to make the provisions hereinafter appearing respecting those places:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1883.

Abolition of special judicial bodies, exclusive rights of trading, exempting from juries, &c.

2. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may in the case of any place or places appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act) apply to each of the places mentioned in the schedules to this Act; that is to say,

(1.) All civil, criminal, and Admiralty jurisdiction of any corporate officer, court, or judge of the said place appointed or holding office under any charter, grant, or prescription shall cease, whether such jurisdiction is conferred by such charter, grant, or prescription, or by any Act, and the place shall be subject to the same jurisdiction as the part of the county in which it is situate or to which it adjoins, and if it adjoins more than one county or part of a county, then as the county or part with which it has the longest common boundary:

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(2.) All exclusive rights of trading, local exemptions from juries, and other local franchises, privileges, and exemptions existing under any charter or grant or prescription shall cease.

Future abolition of corporations, except as provided by new charter or by scheme under 40 & 41 Vict. c. 69.

3.—(1.) On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may, in the case of any place or places, appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act) apply to each of the places mentioned in the schedules to this Act to which Her Majesty may not be pleased before the said day to grant a new charter, that is to say,

(a) The place shall not be a corporate town or borough, and any municipal or other corporation thereof existing under any charter or grant or prescription shall be dissolved:

(b) All property of any corporation in the place which is dissolved by this Act, or of any person as member or officer thereof, or of any court or judge whose jurisdiction is abolished by this Act, shall be applied for the public benefit of the inhabitants of the place in such manner as may be for the time being provided by a scheme of the Charity Commissioners, or, in a case where a scheme is made by the Local Government Board, by that scheme, and shall vest in such persons or body corporate as may be specified in such scheme.

(2.) Provided that until any such scheme takes effect the said property shall continue to be held, managed, and enjoyed as heretofore in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the persons managing the property shall continue in like manner as if they were a body constituted by the scheme for the administration of such property, but the legal estate in the property shall vest in the official trustees.

The Act referred to in the marginal note was repealed by s. 5 of the Municipal Corporations Act, 1882, and is now replaced by ss. 210—218 of that Act, *ante*, p. 142.

Saving for new charters and for charities.

4.—(1.) Nothing in this Act shall prevent the application to any place of any charter applying the Municipal Corporation Acts which Her Majesty may be pleased to grant, or affect anything done in pursuance of those Acts or any scheme thereunder, and shall not affect the operation of any such charter, thing, or scheme; save that nothing in the said Acts or scheme shall authorize the establishment or continuance of any court for the trial of civil actions.

(2.) Nothing in this Act shall affect the right to the benefit of any charity, or shall alter or confer any power of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this Act.

As to the grant of a charter applying the Municipal Corporations Acts, see s. 210 of the Municipal Corporations Act, 1882, *ante*, p. 142. For the definition of the expression "Municipal Corporations Acts," see s. 27, *post*, and s. 7 of the Act of 1882.

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Inquiry as to places mentioned in first part of First Schedule.

5. Whereas the Commissioners of 1876 reported that the places mentioned in the first part of the First Schedule to this Act might be dealt with by being subjected to the provisions of the Municipal Corporations Act, 1835, and the Acts amending the same, as if they were mentioned in Schedule B of the Municipal Corporations Act, 1835: Be it therefore enacted as follows:

(1.) As soon as conveniently may be after the passing of this Act, the Privy Council shall cause an inquiry to be made into the expediency of advising Her Majesty to grant a charter extending the Municipal Corporation Acts to the several places mentioned in the first part of the First Schedule to this Act, and also whether it is expedient that any adjoining district not included in the existing corporations shall be included in the places to which such charters may be granted, and shall report to Her Majesty thereon.

(2.) The expenses of such inquiry shall be regulated by the Commissioners of Her Majesty's Treasury, and paid out of moneys provided by Parliament.

(3.) Nothing in this section shall require an inquiry to be held with respect to any place with respect to which a similar inquiry has been held since the first day of January one thousand eight hundred and seventy-nine.

Power to Privy Council to preserve certain courts and officers.

6.—(1.) The Privy Council, upon being satisfied by any applicants after inquiry that it is expedient for the public so to do, may, by order, provide for retaining any court leet or other court or any officer, whether as returning officer for the return of members to serve in Parliament, or as town clerk for the purpose of the registration of parliamentary voters, or otherwise, and for the appointment of any officer so retained, subject in every case to such exceptions, restrictions, and modifications as seem expedient.

(2.) Subject to the provisions of any Order of the Privy Council, any person who at the passing of this Act holds an office by virtue of which he is such returning officer or town clerk as aforesaid may during the time limited for the tenure of his office continue to perform the duties of such returning officer or town clerk as aforesaid, and on the expiration of such time, or his otherwise ceasing to perform the duties, the said duties shall, so far as regards the returning officer, be performed in manner provided by the Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act to amend the law relating to the appointment of returning officers in certain cases," and so far as regards the town clerk shall be performed by the person in the parliamentary borough who is town clerk within the meaning of section one hundred and one of the Parliamentary Registration Act, 1843.

Scheme of Local Government Board respecting places under local boards or improvement commissioners.

7. Whereas there are local boards or improvement commissioners in some of the places mentioned in the First Schedule to this Act, and the Commissioners of 1876 reported that it might be expedient to establish local boards in other of such places: Be it therefore enacted as follows:

(1.) Where any part of any of the places mentioned in any of the

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schedules to this Act is comprised in the district of any local board or improvement commissioners, whether established before or after the passing of this Act, and Her Majesty is not pleased to grant a charter to such place, the Local Government Board, after such local inquiry as they think expedient, may, at any time before any corporation in the said place becomes abolished by this Act, make such scheme as might be made by the Committee of Council under part eleven of the Municipal Corporations Act, 1882 :

45 & 46 Vict. c. 50.

(2.) Sections two hundred and thirteen and two hundred and fourteen of and the Seventh Schedule to that Act shall, so far as is consistent with the tenour thereof, apply accordingly as if they were herein re-enacted, with the substitution of the Local Government Board for the Committee of Council, and of the said district for borough, and with a limitation to the purposes of this section :

(3.) A scheme may be made as aforesaid for the purpose of amending any previous scheme under this section :

(4.) Sections two hundred and ninety-four, two hundred and ninety-five, and two hundred and ninety-six of the Public Health Act, 1875, shall, so far as is consistent with the tenour thereof, apply to any local inquiry held by order of the Local Government Board for the purposes of this section.

38 & 39 Vict. c. 55.

See ss. 213 and 214 of the Municipal Corporations Act, 1882, *ante*, pp. 144—146.

Power of Charity Commissioners.

8.—(1.) The Charity Commissioners may provide, by the appointment of interim trustees and otherwise, for the security and proper management and application of the property, for the application of which such Commissioners have, or may in certain events have, power under this Act to make a scheme.

(2.) If any such property has after the first day of March one thousand eight hundred and eighty-three, and before the date at which a charter or a scheme under this Act, or the Municipal Corporations Act, 1882, as the case may be, takes effect, been alienated by way of sale, mortgage, grant, lease, charge, or otherwise, and such alienation has not been made in pursuance of some covenant, contract, or agreement bonâ fide made or entered into on or before the said first day of March, or of some resolution duly entered in the Corporation books of the Corporation on or before the said first day of March, or in pursuance of any right saved by this Act, and such alienation has been made collusively and for no consideration, or for insufficient consideration, such alienation may be set aside in the like proceedings (instituted with the consent of the Charity Commissioners or of the Attorney General) and in like manner as a lease of land of a charity granted without due consideration may be set aside : Provided that if a charter is granted or a scheme made whereby the property is affected, the said proceedings shall be commenced within one year after the charter or scheme takes effect.

(3.) Anything authorized by this Act to be done by the Charity Commissioners may be done by an order of those Commissioners, which may be made in like manner as if the property were the endowment

of a charity and application had been made as provided by the Charitable Trusts Acts, 1853 to 1869; and an order of the Charity Commissioners may be made at any time after the passing of this Act, so, however, that the order shall not take effect until such date as the Charity Commissioners fix as being, in their opinion, under the circumstances of the case, most consistent with the purposes of this Act. Section 8. 16 & 17 Vict. c. 137. 32 & 33 Vict. c. 110.

(4.) Any corporation or person directly affected by any order of the Charity Commissioners under this Act in relation to any property made before a scheme under this Act has provided for the application of such property, or directly affected by the order of the Charity Commissioners which first establishes a scheme providing for the application of such property, may, if aggrieved by the order, appeal (except as herein-after provided) to the Privy Council, and the Privy Council after considering the objections to the order, and if it seem necessary, hearing the parties, may make such order as in their opinion the Charity Commissioners ought to have made, and such order shall have the same effect under this Act as if made by the Charity Commissioners, and an appeal shall not lie to the High Court of Justice under the Charitable Trusts Acts, 1853 to 1869, against any order against which an appeal to the Privy Council can be had in pursuance of this enactment.

(5.) After a scheme has been made under this Act providing for the application of any property the Charitable Trusts Acts, 1853 to 1869, shall apply in all respects as if the scheme were a scheme made in pursuance of those Acts, and the property shall for the purpose of those Acts be deemed to be the endowment of a Charity.

9.—(1.) All property by this Act vested in the official trustees or any body corporate or persons shall, so far as the same can be transferred by this Act, be transferred by virtue of this Act, and so far as the same cannot be so transferred, be held in trust for those trustees, body corporate, or persons, and shall be vested for the same estate and interest, and subject to the same liabilities, for and subject to which such property was held at the time immediately before the same becomes so vested. Provision as to property and transfer thereof.

(2.) For the purposes of this Act the expression "property" includes all property, real and personal, and all things in action, and all rights of common or commonable rights, and rights to toll, and all franchises, privileges, and rights which have any pecuniary value, and all charters, records, deeds, books, and documents, and includes any estate or interest, legal or equitable, in any property as so defined; and all property held, enjoyed, claimed, or administered by any corporation, court, judge, or person shall for the purposes of this Act be deemed to be the property of such corporation or person.

(3.) All powers and duties conferred or imposed by any local Act of Parliament (including a Provisional Order confirmed by Parliament) on, and all trusts administered by, any corporation abolished by this Act, or any officers or nominees of such corporation, either alone or jointly with other persons, shall vest in and be exercised, and performed, and administered by such persons as may be provided by a scheme under this Act, and until such scheme takes effect by the same persons as at the passing of this Act.

(4.) Any question which may arise as to whether anything is property

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within the meaning of this Act, or as to whether anything is vested in the official trustees or any body corporate or persons as provided by this Act, shall in the first instance be decided by the Charity Commissioners, subject, nevertheless, to an appeal to the High Court of Justice, as provided by section eight of the Charitable Trusts Act, 1860, and such appeal may be presented by any person interested or claiming to be interested in the property, and the provisions of this Act with respect to an appeal to the Privy Council shall not apply.

23 & 24 Vict. c. 136.

Reservation of rights of property and beneficial exemptions to freemen, their wives and children.

10.—(1.) Every person who now is or hereafter may be an inhabitant of any borough mentioned in any of the schedules to this Act, and also every person who has been admitted or might hereafter have been admitted a freeman or burgess of any such borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any such borough or any municipal or other corporation thereof, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money, or other personal estate, of which any person or any corporation may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner as he or she by any statute, charter, byelaw, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed: Provided that—

(a) The total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses, which on the first day of March one thousand eight hundred and eighty-three were defrayed out of or chargeable upon the same:

(b) Nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or duties levied wholly or in part by or to the use or benefit of any borough or corporation; and after the passing of this Act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any corporation except as hereinafter is excepted:

(c) Nevertheless, every person who on the said first day of March was an inhabitant or was entitled to be admitted a freeman or burgess of any borough mentioned in any of the schedules to

this Act, or who on the said first day of March was the wife or widow, son or daughter, of any freeman or burgess of any such borough, or who on the said first day of March was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or corporation as fully and for such time and in such sort as he or she by any statute, charter, byelaw, or custom in force on the first day of March might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise : Section 10.

(d) Where, by any statute, charter, byelaw, or custom in force at the time of passing this Act within any of the boroughs mentioned in any of the schedules to this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any corporation, or to any member, officer, or servant of any corporation, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, elected under the Municipal Corporations Act, 1882, or to such other person as may be appointed in that behalf by a scheme under that Act or under this Act :

(e) Nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or corporation, or of any person, to the benefit of any such rights as are herein-before reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed.

(2.) From and after the passing of this Act no person shall be elected, made, or admitted a burgess or freeman of any borough mentioned in any of the schedules to this Act by gift or purchase.

(3.) Every scheme under the Municipal Corporations Act, 1882, or this Act, shall, if need be, provide for carrying this section into effect, and for the enrolment of persons from time to time entitled under this section, and a scheme may be made for that purpose or for the purpose of managing any property to which the said persons may be for the time being entitled.

11.—(1.) If any person alleges that he is by virtue of this Act deprived of any emolument or pecuniary profit, or any other profit of a pecuniary value, he may apply to the Local Government Board, and that Board, Saving for vested interests.

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if satisfied that the allegation is true, and that under all the circumstances the applicant ought, if deprived thereof, to receive compensation for the same, may order that he shall continue to enjoy such emolument or profit, or shall receive such compensation for the same as the Board may think just, and if the compensation is pecuniary, the money shall (and if necessary from time to time) be raised in such manner or paid out of such funds (being, so far as may be, the same manner or funds in or out of which the emolument or profit was previously raised or paid) as the order directs.

(2.) All liabilities of any corporation, court, judge, or officer abolished by this Act, existing at the time of such abolition, shall be discharged out of the same funds and in the same manner, as near as may be, as they would have been if this Act had not passed : and the Local Government Board, on the application of any person interested, may by order provide in such manner as they think expedient for the discharge of such liabilities.

(3.) For the purposes of this section, a rate, toll, or due may continue to be levied, and may be made, assessed, levied, and collected by such persons as the Local Government Board direct, in like manner as if they were the persons who, if this Act had not passed, would have been authorized to make, assess, and levy such rate, toll, or due.

(4.) An order under this section may be made an order of the High Court of Justice, and may be enforced accordingly.

Saving for powers of Committee of Council and Charity Commissioners.

12. Nothing in this Act shall be in derogation of any power otherwise vested in the Committee of Council, or the Charity Commissioners, and the Committee of Council and Charity Commissioners may exercise for the purposes of this Act all powers otherwise vested in them in relation to boroughs and charities respectively.

Saving as to Cinque Ports

13. With respect to any cinque port or ancient town or member of a cinque port mentioned in the schedules to this Act, the following provisions shall have effect :—

(1.) Nothing in this Act shall diminish the jurisdiction of the Court of Admiralty of the Cinque Ports within the boundaries defined by the Act of the session of the first and second years of the reign of King George the Fourth, chapter seventy-six, intituled " An Act to continue and amend certain Acts for preventing the various frauds and depredations committed on merchants, shipowners, and underwriters by boatmen and others within the jurisdiction of the Cinque Ports ; and also for remedying certain defects relative to the adjustment of salvage under a statute made in the twelfth year of the reign of Her late Majesty Queen Anne," or of any commissioners appointed in pursuance of that Act :

(2.) Nothing in this Act shall increase the authority or jurisdiction which any cinque port, or any court, justice, or officer of a cinque port, has over any member of a cinque port, notwithstanding that that member is, in pursuance of this Act, no longer corporate :

(3.) The non-corporate members of any such cinque port or ancient

town shall form part of the body of the county, and hundred, and other division in which those members are respectively situate. Section 13.

As to the Cinque Ports, see s. 248 of the Municipal Corporations Act, 1882, *ante*, p. 162.

14. In the event of a charter not being granted to Winchelsea the property of the corporation of Winchelsea shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the corporation of Winchelsea shall continue undissolved in like manner as if it were constituted by the said scheme; and, notwithstanding anything in this Act, Winchelsea shall continue to be entitled an ancient town of the Cinque Ports. Saving as to Winchelsea.

15.—(1.) Every body referred to in the First Schedule to this Act shall, notwithstanding any mistake in the name or description thereof, be subject to this Act, as a corporation, and be deemed to be a local authority within the meaning of section two hundred and thirteen of the Municipal Corporations Act, 1882. Provision as to local authorities and officers. 45 & 46 Vict. c. 50.

(2.) Any mayor, jurat, recorder, justice of the peace, coroner, bailiff, sergeant, inspector, or constable, or any other officer by whatever name called, having or claiming the authority of any judge or officer above named, shall be deemed to be included in this Act in the expression judge or officer, as the case may be.

(3.) Where in any report of the Commissioners of 1834, or in any report of the Commissioners of 1876, any corporation, court, sessions, judge, recorder, justice, coroner, constable, inspector, authority, or officer, or any franchise, privilege, right, or exemption, or any property, is mentioned in connection with any place mentioned in the schedules to this Act, that mention shall be evidence that the same is subject to this Act.

16.—(1.) Nothing in this Act shall affect the right enjoyed by any person at the passing of this Act to vote for any member or members to serve in Parliament. Saving for rights of voting and acts done.

(2.) The abolition by this Act of any jurisdiction shall not affect anything done in pursuance of such jurisdiction before it is abolished; any offence committed before such abolition may be prosecuted, tried, and punished as if the jurisdiction had been abolished at the time when the offence was committed.

As to the right to vote, see s. 209 of the Municipal Corporations Act, 1882, and note (*a*) to that section, *ante*, p. 141.

17. Whereas it appears from the Report of the Commissioners of 1876, that doubt exists as to whether the corporation mentioned in Part II. of the First Schedule to this Act, as existing or reputed to exist in Romney Marsh, is a municipal corporation, and it is expedient to make such provision respecting the same and respecting the lords bailiff and jurats of Romney Marsh as hereinafter contained: Be it therefore enacted as follows: Saving for Romney Marsh.

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(1.) The reputed corporation of the bailiff jurats and commonalty of Romney Marsh shall, notwithstanding anything in this Act, continue to exist, and to elect officers, and to hold the property vested in them, but any such corporation shall not have or exercise any municipal rights or powers; and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

(2.) Notwithstanding anything in this Act, the bailiff and justices of the corporation of Romney Marsh shall continue to be appointed and elected, as nearly as may be, in like manner as heretofore, and to have authority as justices in like manner as if they were justices assigned by a commission from Her Majesty in a liberty not having a separate court of quarter sessions.

(3.) The reputed corporation of the lords bailiff and jurats of Romney Marsh shall not be deemed a municipal corporation, and notwithstanding anything in this Act shall continue to exist, to elect officers, to hold the property vested in them, and to exercise the same powers as heretofore, and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

Saving for Havering-atte-Bower.

18. Whereas it appears from the Report of the Commissioners of 1876 that doubt exists whether the corporation of Havering-atte-Bower is a municipal corporation, and whether an Order in Council for the union of Havering-atte-Bower to the county of Essex might be made in pursuance of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter one hundred and five, intituled "An Act for facilitating the union of liberties with the counties in which they are situate," upon the petition of the justices of the said county, without any petition from the justices of Havering-atte-Bower: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to apply to Havering-atte-Bower or to the justices or corporation or reputed corporation thereof, save that it shall be lawful that an Order in Council be made for uniting Havering-atte-Bower to the county of Essex, in pursuance of the recited Act, upon the petition either of the justices of the said county or of the justices of Havering-atte-Bower.

Saving for Local Act relating to Alnwick.

19. Notwithstanding anything in this Act, the corporation referred to in the Alnwick Corporation Act, 1882, shall continue to be a corporation and to hold and administer the property vested in such corporation at the passing of this Act, and shall apply the same for the purposes mentioned in the said Alnwick Corporation Act, 1882, and the maintenance as heretofore of the Corporation schools, or for any other public or charitable purposes; and the provisions of this Act with respect to an inquiry by the Privy Council or the Local Government Board, or with respect to a scheme by the Local Government Board, shall not

apply to Alnwick, and this Act shall not affect the provisions of the said Alnwick Corporation Act, 1882. Section 19.

Saving as to Laugharne and Malmesbury.

20. Whereas in Laugharne and Malmesbury divers members of the corporation, whether called burgesses, landholders, or any other name, have the right to occupy without rent or at low rents certain property belonging to the corporation, and it is expedient to make provision with respect to such property, be it enacted as follows :

(1.) In the event of a charter not being granted to Laugharne or Malmesbury, the property of the corporation of the place to which a charter is not so granted shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, enjoyment, and management, and for that purpose the corporation in the said place shall continue undissolved in like manner as if it were constituted by the said scheme.

(2.) The corporation of such place, subject to the approval of the Charity Commissioners, may sell all or any of the property of the corporation for the best price that may be got for the same ; and, after compensating or saving the rights of any person in such property, whether existing or prospective, may pay the proceeds to any public authority in the locality, to be applied by such authority for the benefit of the inhabitants of the said place.

(3.) The provisions of this Act and of the Municipal Corporations Act, 1882, for saving the rights and interests of freemen and of persons who might have become freemen shall extend to the rights and interests of persons who are or if this Act had not passed might have become landholders, assistant burgesses, or capital burgesses in Malmesbury, and for that purpose freemen of Malmesbury may continue to be elected landholders, assistant burgesses, and capital burgesses.

Saving for Newport, Pembroke.

21. Whereas it appears from the report of the Commissioners of 1876 that the office of mayor of Newport (Pembroke) is purely honorary, and that the corporation has no revenue and no municipal function : Be it therefore enacted as follows :

Nothing in this Act shall be deemed to prevent the election of the mayor of Newport (Pembroke) as heretofore, or to dissolve the corporation of Newport (Pembroke), or deprive the lord of the manor or the burgesses of any tolls, rights of common, or other rights of a pecuniary value.

Saving for Over.

22. Whereas it appears from the report of the Commissioners of 1876 that the corporation of Over has no revenue, and no municipal function, and that the mayor of Over, elected at the court leet, has a magisterial but no other jurisdiction : Be it therefore enacted as follows :

Nothing in this Act shall be deemed to prevent the holding of the court leet, and the election by such court of the mayor of Over as hereto-

Section 22.

fore, but such mayor shall not, as such, have the jurisdiction of a justice, whether for criminal, licensing, or any other purpose.

Saving for Altrincham.

23. Whereas it appears from the report of the Commissioners of 1876 that the corporation of Altrincham has no municipal function, and that the mayor of Altrincham elected at the court leet has no jurisdiction, be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the holding of the court leet and the election by such court of the mayor of Altrincham as heretofore, but such mayor shall not have any jurisdiction, magisterial, municipal, or other.

Saving for lord of the manor of Corfe Castle.

24. Nothing in this Act shall deprive the lord of the manor of Corfe of any title enjoyed by him under any charter.

Saving for certain rights.

25.—(1.) Nothing in this Act shall diminish the liability of the owner or occupier of any tenement to any rent or sum payable under any charter granted to any corporation mentioned in the Schedules to this Act, and any person entitled to receive such rent or sum shall have the same right and remedy for recovering the same as prior to the passing of this Act, and also upon the abolition by this Act of the corporation under the charter shall have the power of such corporation or of any officer of such corporation to enforce payment of such rent or sum.

(2.) The provisions of this section and of the other parts of this Act for protecting the rights of persons interested shall have effect in favour of Her Majesty, her heirs and successors, and of any body corporate, not being a corporation abolished by this Act, in like manner as if Her Majesty, her heirs and successors, and such body corporate, were included in the term person.

(3.) Nothing in this Act shall affect the legal proceedings pending at the passing of this Act on the information of the Attorney-General against the corporation of the mayor and burgesses of Holt, and certain members of that corporation, and for the purpose of such proceedings the said corporation shall continue to be and to act as a corporation, and the mayor, bailiff, and burgesses shall continue to be elected and appointed in like manner as if this Act had not passed, and any liabilities of such corporation under any judgment, decree, or order in such legal proceedings shall be deemed for the purposes of this Act to be liabilities of the corporation existing at the time of the abolition thereof.

Repeal of Acts and charters.

26.—(1.) So much of any act, law, charter, or usage as is inconsistent with this Act is hereby repealed.

(2.) The Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter seventy-one, intituled "An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts," shall, on and after the first day of January one thousand eight hundred and eighty-six, or such later day, not after the first day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may appoint, be repealed, without prejudice to any rate previously made in pursuance of that Act, and without prejudice to the making of any rate which is by this Act

authorised to be made; and any such rate may be made, levied, collected, and applied, as nearly as may be, as if the said Act had not been repealed. Section 26.

27. In this Act, unless the context otherwise requires,— Definitions.

The expression "Privy Council" means the Lords of Her Majesty's most Honourable Privy Council, or any two of them;

The expression "Committee of Council" means a Committee of the said Lords:

The expression "Municipal Corporation Acts" has the same meaning as in the Municipal Corporations Act, 1882. 45 & 46 Vict. c. 50.

The expression "Charity Commissioners" means the Charity Commissioners for England and Wales:

The expression "official trustees" means, as respects real property the official trustee of charity lands, and as respects all other property the official trustees of charitable funds, acting under the Charitable Trusts Acts, 1853 to 1869. 16 & 17 Vict. c. 137. 32 & 33 Vict. c. 110.

For the definition of the expression "Municipal Corporations Acts," see s. 7 of the Municipal Corporations Act, 1882, *ante*, p. 4.

SCHEDULES.

FIRST SCHEDULE.

PLACES REPORTED ON BY THE COMMISSIONERS OF 1876.

PART 1.

Places to which the Commissioners of 1876 *consider that the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Aldeburgh	"The bailiff and burgesses of the borough of Aldeburgh."
Alnwick	"The chamberlains, common council, and freemen."
Appleby	"The mayor, aldermen, and capital burgesses."
Bishop's Castle	"The bailiff and burgesses of the borough of Bishop's Castle."
Bradninch	"The mayor and burgesses of the borough of Bradninch."
Christchurch	"The mayor and burgesses of the borough of Christchurch."
Henley-on-Thames	"The mayor, aldermen, bridgemen, and burgesses of Henley-on-Thames."
Kidwelly	"The mayor, aldermen, bailiffs, and burgesses."
Llanfyllin	"The bailiffs and burgesses of the borough of Llanfyllin."
Lostwithiel	"The mayor and burgesses of Lostwithiel."
Lydd	"The bailiffs, jurats, and commonalty of the town of Lydd."
Malmesbury	"The aldermen and burgesses of the borough of Malmesbury."
Montgomery	"The bailiffs and burgesses of the borough of Montgomery."
New Romney	"The mayor, jurats, and commonalty of the town and port of New Romney."
Okehampton	"The mayor and burgesses of the town and borough of Okehampton."

Schedule 1, Part I.

Places.	Corporation or reputed Corporation.
Over	"The mayor of Over."
Queenborough	"The mayor, jurats, bailiffs, and burgesses of Quinborowe."
Radnor	"The bailiff, aldermen, and burgesses of New Radnor."
Saltash	"The mayor and free burgesses of the borough of Saltash."
Sutton Coldfield	"The warden and society of the royal town of Sutton Coldfield."
Wareham	"The mayor, capital burgesses, and assistants of the borough of Wareham."
Wilton	"The mayor and burgesses of the borough of Wilton."
Wokingham	"The aldermen and burgesses of the town of Wokingham."
Woodstock	"The mayor and commonalty of the borough of New Woodstock."
Wootton Bassett	"The mayor, aldermen, and burgesses of the borough of Wootton Bassett."

PART II.

Places not mentioned by the Commissioners of 1876 *as places to which the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Alresford	"Bailiff and burgesses of New Alresford."
Altrincham	"The mayor, aldermen, and burgesses of the borough of Altrincham."
Axbridge	"The mayor, aldermen, and burgesses of the borough of Axbridge."
Berkeley	"The mayor and aldermen of the borough of Berkeley."
Bovey Tracey	"The mayor and freeholders of Bovey Tracey."
Brackley	"The mayor, aldermen, and burgesses of the borough of Brackley."
Brading	"The bailiffs, burgesses, and commoners of the borough of Brading."
Camelford	"The mayor and burgesses of the vill of Camelford."
Chipping Campden	"The high steward, deputy steward, treasurer, senior bailiff, junior bailiff, and capital and inferior burgesses of Chipping Campden."
Corfe Castle	"The mayor, barons, and inhabitants of Corfe."
Cowbridge	"The bailiffs, aldermen, and burgesses of the town of Cowbridge."
Dinas Mowddwy	"The mayor and burgesses of Dinas Mowddwy."
Dunwich	"The bailiffs, burgesses, and commonalty of the borough and corporation of Dunwich."
Dursley	"The bailiff and aldermen of Dursley."
East Looe	"The mayor and free burgesses of the borough of East Looe."
Fordwich	"The mayor, jurats, and commonalty of the town of Fordwich."
Garstang	"The bailiff and burgesses of the borough of Garstang."
Great Dunmow	"The bailiff and burgesses of the borough of Great Dunmow."
Harton	"The portreeve and burgesses of Harton."
Havering-atte-Bower	"The tenants and inhabitants of the lordship or manor of Havering-atte-Bower."

Schedule 1, Part II.

Places.	Corporation or reputed Corporation.
Higham Ferrers	"The mayor, aldermen, and burgesses of the borough and parish of Higham Ferrers."
Holt	"The mayor and burgesses of Holt."
Ilchester	"The bailiff and burgesses of Ilchester."
Kenfig	"The constable of the castle, portreeve, and burgesses of Kenfig."
Kilgerran	"The portreeve and burgesses of Kilgerran."
Lampeter	"The burgesses of the borough of Lampeter Pont Stephen."
Langport Eastover ...	"The portreeve and commonalty of the borough of Langport."
Laugharne	"The portreeve and burgesses of the town and corporation of Laugharne."
Llantrissant	"The constable of the castle, portreeve, aldermen, and burgesses of Llantrissant."
Loughor	"The portreeve, aldermen, and burgesses of the borough of Loughor."
Marazion	"The mayor, burgesses, and inhabitants of the town of Marazion."
Nevin	"The mayor, bailiffs, and burgesses of the town and borough of Nevin."
Newport (Salop)	"The high steward, bailiffs, and burgesses of Newport."
Newport (Pembroke) ..	"The mayor, aldermen, and burgesses of the borough of Newport."
Orford	"The mayor and commonalty of the borough of Orford."
Overton	"The burgesses of Overton."
Petersfield	"The mayor of Petersfield."
Pevensey	"The bailiff, jurats, and commonalty of the town and liberty of Pevensey."
Romney Marsh	"The bailiffs, jurats, and commonalty."
St. Clear's	"The burgesses and commonalty of St. Clear's."
Seaford	"The bailiff, jurats, and freemen of the town and port of Seaford."
Thornbury	"The bailiff and aldermen of Thornbury."
Usk	"The portreeve and burgesses of Usk."
Westbury	"The mayor and burgesses of Westbury."
Wickwar	"The mayor and aldermen of Wickwar."
Winchcomb	"The bailiffs and burgesses of Winchcomb."
Winchelsea	"The mayor, jurats, and commonalty of the ancient town of Winchelsea."
Wootton-under-Edge ..	"The mayor and aldermen of Wootton-under-Edge."
Yarmouth (Isle of Wight).	"The mayor and chief burgesses of the borough of Yarmouth."[a]

Note.—Since the report of the Commissioners a charter has been granted to the town of Lewes.

Schedule 2.

SECOND SCHEDULE.

Places in which the Commissioners of 1876 *report that a Municipal Corporation has not existed or has become virtually extinct.*

PART I.

Places mentioned in paragraph (15) *of the Report of the Commissioners of* 1876 *as places which either have not been municipal or have long since ceased to be so :*

Bala.
Bangor.
Bridlington.
Chipping Sodbury.
Criccieth.
Crickhowell.
Farnham.
Fishguard.
Fowey.
Grampound.
Harlech.
Hay.
Machynlleth.
Midhurst.
Newborough.
Newton (Lancashire).
Presteign.
Ruyton.
St. David's.
Tavistock.
Weobley.
Wiston.

PART II.

Places mentioned in paragraph (16) *of the Report of the Commissioners of* 1876 *as having had municipal corporations in* 1835 :

Bossinny.
Caerwys.
Castle Rising.
Clun.
Llanelly.
Newtown (Isle of Wight).
Plympton Earle.
Rhuddlan.
Tregony.
West Looe.

THE MUNICIPAL CORPORATIONS ACT, 1893.

(56 & 57 Vict. c. 9.)

An Act to Amend the Municipal Corporations Act, 1882.

[9th June, 1893.]

Whereas it is expedient to amend the Municipal Corporations Act, 1882:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1893.

Amendment of 45 & 46 Vict. c. 50, s. 30.

2. A petition under the thirtieth section of the Municipal Corporations Act, 1882, may be presented upon a resolution passed by a majority of the whole council, and may pray for the alteration of the boundaries of the wards of a borough without any alteration of their number; and where any such petition prays for the alteration of boundaries only, the provisions of the said section shall apply so far as applicable.

See s. 30 of the Municipal Corporations Act, 1882, *ante*, p. 44.

No second petition to be presented within seven years.

3. When the powers conferred by the said section, as amended by this Act, have been exercised in pursuance of a petition by the council of any borough, a further petition from the council of the same borough shall not be presented before the expiration of seven years from the date of the previous Order in Council under the said section, as so amended.

THE MUNICIPAL CORPORATIONS AMENDMENT ACT, 1906.

(6 Edw. 7, c. 12.)

An Act to amend the Municipal Corporations Act, 1882.

[20th July, 1906.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the Municipal Corporations Amendment Act, 1906, and shall be read as one with the Municipal Corporations Act, 1882.

Amendment of 45 & 46 Vict. c. 50, s. 12.

2. At the end of sub-section (*e*) of section twelve of the Municipal Corporations Act, 1882, there shall, by virtue of this Act, be added the words " or any society registered under the Industrial and Provident Societies Acts, 1893 and 1895," and all other enactments having reference in any manner to the section aforesaid shall be read and have effect accordingly.

PART II.

THE MUNICIPAL CORPORATIONS ACT, 1835.

(5 & 6 Will. 4, c. 76.)

An Act to provide for the Regulation of Municipal Corporations in England and Wales. [9th September, 1835.]

[*Whereas divers bodies corporate at sundry times have been constituted within the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed; and it is expedient that the charters by which the said bodies corporate are constituted should be altered in the manner hereinafter mentioned; Be it therefore enacted, That so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent now in force relating to the several boroughs named in the schedules (A) and (B) to this Act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate named in the said schedules, or any of them, as are inconsistent with or contrary to the provisions of this Act, shall be and the same are hereby repealed and annulled.*]

Repeal of all Acts, charters, and customs inconsistent with this Act.

This Act has been wholly repealed by the Municipal Corporations Act, 1882, but the effect of sections 1 and 2 is preserved by that Act, and they are therefore reproduced here.

As to the meaning of the word "inhabitants" in a charter, see *R.* v. *Mashiter*, (1837) 6 A. & E. 153; 1 N. & P. 314; W. W. & D. 173; 6 L. J. (N. S.) K. B. 121; 45 R. R. 433; *R.* v. *Davie*, (1837) 6 A. & E. 374; 45 R. R. 494.

2. [*And whereas in divers cities, towns, and boroughs, the common lands and public stock of such cities, towns, and boroughs, and the rents and profits thereof, have been held and applied for the particular benefit of the citizens, freemen, and burgesses of the said cities, towns, and boroughs respectively, or of certain of them, or of the widows or kindred of them, or certain of them, and have not been applied to public purposes; Be it therefore enacted, that every person who now is or hereafter may be an inhabitant of any borough, and also every person who has been admitted or who might hereafter have been admitted a freeman or burgess of any borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the*

Reservation of all rights of property and beneficial exemptions to freemen, their wives and children.

Section 2.

lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money, or other personal estate, of which any person or any body corporate may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner as he or she by any statute, charter, byelaw, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed: Provided always, that the total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses which, on the fifth day of June, were defrayed out of or chargeable upon the same: Provided also, that nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or body corporate; and that after the passing of this Act, no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any body corporate, except as hereinafter is excepted: Provided nevertheless, that every person who, on the fifth day of June in this present year, was an inhabitant, or was, or was entitled to be admitted, a freeman or burgess of any borough, or who on the said fifth day of June was the wife or widow, son or daughter of any freeman or burgess of any borough, or who on the said fifth day of June was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or body corporate as fully and for such time and in such sort as he or she, by any statute, charter, byelaw, or custom in force on the said fifth day of June might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise: Provided also, that where, by any statute, charter, byelaw, or custom in force within any borough at the time of passing this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant of any body corporate, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, appointed under the provisions of this Act, on account of the borough fund hereinafter mentioned: Provided also, that nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved, who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim,

right, or title of any burgesses or freemen of any borough or body corporate, or of any person, to the benefit of any such rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed.

Section 2.

The provisions of the Municipal Corporations Act, 1882, with respect to freemen are contained in Part X. of that Act, ss. 201—209, *ante*, pp. 139—142. By s. 201 the term "freeman" in that Part is defined as including any person whose rights and interests were reserved by this Act under the name either of freemen or of burgesses.

The effect of s. 2 of the Act of 1835 was to authorize the application of the corporate property for the benefit of the freemen as it had been applied theretofore, without considering whether such application was illegal as amounting to a perpetuity. *Prestney* v. *Mayor of Colchester*, (1882) 21 Ch. D. 111; 51 L. J. Ch. 805. As to the mode of enforcing the rights of the burgesses in the corporate property, see *Hopkins* v. *Mayor of Swansea*, *ante*, p. 141.

SCHEDULE (A).

England and Wales.

Boroughs which are to have a Commission of the Peace.

Section 1.—*Parliamentary Boundaries to be taken until altered by Parliament.*

Aberystwith.
Abingdon.
Barnstaple.
Bath.
Bedford.
Berwick-upon-Tweed.
Bridgewater.
Bridport.
Bristol.
Bury St. Edmunds.
Cambridge.
Canterbury.
Cardiff.
Carlisle.
Carmarthen.
Carnarvon.
Chester.
Chichester.
Colchester.
Dartmouth.
Denbigh.
Derby.
Devizes.
Dorchester.
Dover.
Durham.
Evesham.
Gateshead.
Gloucester.
Guildford.
Harwich.
Haverfordwest.
Hereford.
Hertford.
Ipswich.
Kendal.
Kidderminster.
Kingston-upon-Hull.
King's Lynn.
Leeds.
Leicester.
Leominster.
Lichfield.
Liverpool.
Macclesfield.
Monmouth.
Neath.
Newark.
Newcastle-under-Lyne.
Newcastle-upon-Tyne.
Newport, Monmouth.
Newport (Isle of Wight).
Northampton.
Norwich.
Nottingham.
Oxford.
Pembroke.
Poole.
Portsmouth.
Preston.
Reading.
Ripon.
Rochester.
St. Alban's.
Sarum, New.
Scarborough.
Shrewsbury.
Southampton.
Stafford.
Stamford.
Stockport.
Sudbury.
Sunderland.
Swansea.
Tiverton.
Truro.
Warwick.
Wells.
Weymouth and Melcombe Regis.
Wigan.
Winchester.
Windsor.
Worcester.
Yarmouth, Great.

Schedule (A.)

Section 2.—*Municipal Boundaries to be taken until altered by Parliament.*

Andover.
Banbury.
Beverley.
Bewdley.
Bideford.
Boston.
Brecon.
Bridgenorth.
Clitheroe.
Chesterfield.
Congleton.
Coventry.
Deal.
Doncaster.
Exeter.
Falmouth.
Grantham.
Gravesend.
Grimsby.
Hastings.
Kingston-upon-Thames.
Lancaster.
Lincoln.
Liskeard.
Louth.
Ludlow.
Maidstone.
Maldon.
Newbury.
Oswestry.
Penzance.
Plymouth.
Pontefract.
Richmond.
Romsey.
St. Ives.
Saffron Walden.
Stockton.
Tewkesbury.
Walsall.
Welchpool.
Wenlock.
Wisbech.
York.

SCHEDULE (B).

ENGLAND AND WALES.

Boroughs which are not to have a Commission of the Peace, unless on Petition and Grant

Section 1.—*Parliamentary Boundaries to be taken until altered by Parliament.*

Arundel.
Beaumaris.
Cardigan.
Llanidloes.
Pwllheli.
Ruthin.
Tenby.
Thetford.
Totnes.

Section 2.—*Municipal Boundaries to be taken until altered by Parliament.*

Basingstoke.
Beccles.
Blandford Forum.
Bodmin.
Buckingham.
Calne.
Chard.
Chippenham.
Chipping Norton.
Daventry.
Droitwitch.
Eye.
Faversham.
Folkestone.
Flint.
Glastonbury.
Godalming.
Godmanchester
Helstone.
Huntingdon.
Hythe.
Launceston.
Llandovery.
Lyme Regis.
Lymington.
Maidenhead.
Marlborough.
Morpeth.
Penryn.
Retford, East.
Rye.
Sandwich.
Shaftesbury.
South Wold.
South Molton.
Stratford-on-Avon.
Tamworth.
Tenterden.
Torrington.
Wallingford.
Wycombe, Chepping.

THE COUNTY POLICE ACT, 1840.

(3 & 4 Vict. c. 88.)

* * * * *

Boroughs may agree to consolidate their police with county police.

14. It shall be lawful for the justices of any county in which constables shall have been appointed under the said Act, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables, as well as to the county constables, except as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter session assembled, on the one hand, and by the mayor, aldermen and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices and countersigned by the clerk of the peace, or if given by the borough, to be under the common seal of the borough: Provided always, that no such notice shall be given by the justices or by the borough unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough.

The Act here referred to is the County Police Act, 1839 (2 & 3 Vict. c. 93). An agreement made under this section cannot be put an end to without the sanction of a Secretary of State. 19 & 20 Vict. c. 69, s. 20, *post*, p. 244.

Where the council of a borough have applied to the justices of a county to consolidate their police forces, but no agreement for that purpose has been made, the consolidation may be effected by the Privy Council under 19 & 20 Vict. c. 69, s. 5, *post*, p. 241.

Section 14. The consolidation of the borough and the county police is not prevented by the Local Government Act, 1888. See s. 33 (1) of that Act, *post*, p. 423.

As to the payment of riot expenses where the police forces of a borough and a county have been consolidated, see s. 5 (3) and Schedule I of the Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38); and as to the payment of superannuation allowances in such a case, see 53 & 54 Vict. c. 45, s. 30, *post*, p. 501.

Government of consolidated police.

15. In all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable; and so much of the said Act for regulating corporations as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force.

As to the power of the watch committee to dismiss a borough constable, see s. 191 (4) of the Municipal Corporations Act, 1882, *ante*, p. 134. Nothing in that section is to interfere with the operation of this Act. *Ibid.*, sub-s. (6).

* * * * *

THE PARLIAMENTARY VOTERS REGISTRATION ACT, 1843.

(6 & 7 Vict. c. 18.)

An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the election of Members to serve in Parliament for England and Wales. [31st May, 1843.]

The following sections of this Act are made applicable to the enrolment of burgesses by various sections of 41 & 42 Vict. c. 26, and 51 & 52 Vict. c. 10, *post*, pp. 328, 409. Words that have been repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67), are omitted.

* * * * *

Town clerk to have precepts printed, and to issue them to the overseers.

10. The town clerk of every such city or borough shall cause a sufficient number of forms of precepts, notices, and lists to be printed, and shall in every year make, and cause to be delivered to the overseers of the poor of every parish or township situate wholly or in part within such city or borough, or within any place sharing in the election for such city or borough, his precept, and also a sufficient number of the said printed forms of notices and lists.

The provisions of this Act which relate to the proceedings up to the completion of the revision of the lists are made applicable to the burgess lists by 41 & 42 Vict. c. 26, s. 18, *post*, p. 334.

The forms contained in the schedule to this Act were superseded by those prescribed by 41 & 42 Vict. c. 26, s. 8; other forms were subsequently prescribed by the Registration Act, 1885 (48 & 49 Vict. c. 15), the Registration Order, 1889, and the Registration Order, 1895, each set superseding the preceding one. The forms which are now in use are set out *post*, pp. 575 *et seq.*

The precept must now be sent to the overseers on or within seven days before the 15th April. 48 & 49 Vict. c. 15, s. 7.

Overseers to give public notice as to the payment of rates and taxes by occupiers of premises of the yearly value of 10*l.*

11. The overseers of every such parish or township shall, on or before the twentieth day of June in every year, publish a notice in writing stating that no person will be entitled to have his name inserted in any list of voters for the city or borough then next to be made in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, unless he shall pay, on or before the twentieth day of July then next ensuing, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises during the twelve calendar months next before the [*sixth day of April*] then last past.

As to the form of notice, see the note to s. 10, *ante*; and as to the mode of publication, see s. 23 of this Act and 41 & 42 Vict. c. 26, s. 9, *post*, p. 329.

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The 5th of January is now substituted for the 6th of April by 11 & 12 Vict. c. 90; and this section has been extended by 41 & 42 Vict. c. 26, s. 10, *post*, p. 330, to the rates of which payment is required as a condition of enrolment in the burgess roll. As to these rates, see s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 6.

Overseers to have power of inspecting tax assessments, &c.

12. The overseers of every parish or township, for their assistance in making out the list of voters as hereinafter mentioned (upon request made by them or any of them, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the month of July in every year, to any assessor or collector of taxes, or to any other officer having the custody of any tax assessment or duplicate for such parish or township), shall have free liberty to inspect any such tax assessment or duplicate, and to extract such particulars as may appear to such overseer or overseers to be necessary; and every such assessor or collector of taxes shall, within two days after the twentieth day of July in every year, make out and deliver to the said overseers a list containing the name and place of abode of every person who shall not have paid on or before the said twentieth day of July the assessed taxes which shall have become payable from him in respect of any premises within the said parish or township during the twelve calendar months next before the [*sixth day of April*] then last past; and the overseers shall keep the said list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after the list of voters shall have been published, as hereinafter mentioned.

Assessors or collectors of taxes to deliver to overseers a list of persons in arrear of taxes payable at April last past.

The 5th of January is now substituted for the 6th of April in this section by 11 & 12 Vict. c. 90.

Overseers to prepare and publish lists of persons (other than freemen) entitled to vote.

13. The overseers of every such parish or township shall, on or before the last day of July in every year, make out or cause to be made out an alphabetical list of all persons who may be entitled to vote in the election of a member or members to serve in Parliament for such city or borough in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, and another alphabetical list of all other persons (except freemen) who may be entitled to vote in the election of such city or borough by virtue of any other right whatsoever; and in each of the said lists the Christian name and surname of every such person shall be written at full length, together with the place of his abode and the nature of his qualification, and where any person shall be entitled to vote in respect of any property, then the name of the street, lane, and the number of the house (if any) or other description of the place where such property may be situate, shall be specified in the list; and the said overseers shall sign such lists, and shall forthwith cause a sufficient number of copies of each of the said lists to be written or printed, and shall publish copies of the said lists on or before the first day of August in such year, and shall likewise keep a copy of each of the said lists, to be perused by any person without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon

Copies of lists to be kept for inspection and sale.

of any day, except Sunday, during the first fourteen days after such lists shall have been so published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the Schedule (D) to this Act annexed. Section 13.

The lists are now to be made out in the manner directed by 41 & 42 Vict. c. 26, s. 15, *post*, p. 333, but are to be signed and otherwise dealt with in the manner directed by this section. The signature of a majority of the overseers is sufficient. Section 101, *post*.

The form now in use is Form D, No. 1 in Schedule 3 to the Registration Order, 1895, *post*, p. 583.

As to the mode of publication of the lists, see s. 23, *post*.

14. The town clerk of every city or borough shall, on or before the last day of July in each year, make out, according to the form numbered (5) in the said Schedule (B), an alphabetical list of all the freemen of such city or borough who may be entitled to vote in the election of a member or members to serve in any future Parliament for such city or borough, together with the respective places of their abode, and shall sign such list, and cause copies thereof to be written or printed, and shall publish the said list on or before the first day of August in such year, and shall likewise keep a copy thereof, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after such lists shall have been so published, and shall deliver copies thereof to all persons applying for the same on payment of a price for each copy after the rate contained in the table numbered (1) in the Schedule (D) to this Act annexed. Town clerks to prepare and publish the lists of freemen.

15. Every person whose name shall have been omitted in any such list of voters for any city or borough so to be made out as aforesaid, and who shall claim, as having been entitled on the [*last*] day of July then next preceding, to have his name inserted therein, and every person desirous of being registered for a different qualification than that for which his name appears in the said list, shall, on or before the [*twenty-fifth*] day of August in that year, give or cause to be given a notice to the overseers of that parish or township in the list whereof he shall claim to have his name inserted, or if he shall claim as a freeman of any city or borough, or place sharing in the election therewith, then he shall in like manner give or cause to be given to the town clerk of such city, borough, or place a notice according to the form numbered (7) in the said Schedule (B) or to the like effect; and the overseers and town clerks respectively shall include the names of all persons so claiming as aforesaid in lists, according to the forms numbered . . . (9) respectively in the said Schedule (B). Persons omitted from the borough lists to give notice of their claims.

Lists of claimants to be made.

The 15th of July is now substituted for the last day of July by 41 & 42 Vict. c. 26, s. 7, *post*, p. 329; and the 20th of August for the 25th of August by 48 & 49 Vict. c. 15, s. 3.

The forms now in use are Forms H and K in Schedule 3 to the Registration Order, 1895, *post*, pp. 584, 586.

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Registered electors and claimants may inspect rate books.

16. It shall be lawful for any person whose name shall be on any list of voters for the time being for any city or borough, or for any person who shall have claimed to have his name inserted in any such list, upon request made by such person, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, between the tenth day of August and the last day of August, to any overseer or other officer having the custody of any poor-rate book, to inspect such poor-rate book, and make extracts therefrom for any purpose relating to any claim or objection made or intended to be made by or against such person; and every such overseer or other officer as aforesaid is hereby required, upon such request as aforesaid, to permit such inspection and the making of such extracts without payment of any fee.

This right of inspection has been greatly extended by 41 & 42 Vict. c. 26, s. 13, *post*, p. 332.

Persons named in the list may object to others.

Notice of objection to be given to the overseers, or to the town clerk; and also to the person objected to.

17. Every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not having been entitled on the [*last*] day of July next preceding to have his name inserted in any list of voters for the same city or borough; and every person so objecting shall, on or before the [*twenty-fifth*] day of August in that year, give or cause to be given a notice to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted, or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town clerk of such city or borough; and every person so objecting shall also give or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice . . .; and every notice of objection shall be signed by the person objecting.

The 15th of July is now substituted for the last of July by 41 & 42 Vict. c. 26, s. 7, *post*, p. 329; and the 20th of August for the 25th of August by 48 & 49 Vict. c. 15, s. 3.

The form now in use is Form I, No. 1 and No. 2 in Schedule 3 to the Registration Order, 1895, *post*, p. 585.

Any person is qualified to be an objector if his name was in any list of voters at the time when the notice of objection was served, although his name may have been struck off by the revising barrister before the objection was heard. *Pease* v. *Town Clerk of Middlesborough*, [1893] 1 Q. B. 127; 62 L. J. Q. B. 94; 68 L. T. 766; 57 J. P. 759; 9 T. L. R. 56; Fox & Smith, 286. It is a question of fact for the revising barrister to decide whether the description of the objector's place of abode is sufficient or not. *Thackway* v. *Pilcher*, (1866) L. R. 2 C. P. 100; 36 L. J. C. P. 73; 15 L. T. (N. S.) 443; 15 W. R. 223; 31 J. P. 118; Hopw. & Phil. 378.

The notice must state specifically the ground or grounds of objection. 41 & 42 Vict. c. 26, s. 26, *post*, p. 336.

As to what is a sufficient service of the notice of objection, see *Gifford* v. *Overseers of St. Luke's, Chelsea*, (1889) 24 Q. B. D. 141; 59 L. J. Q. B. 98; 61 L. T. 810; 54 J. P. 230; 6 T. L. R. 39; Fox & Smith, 139. Where an objector affixed his name to a notice of objection by means of a stamp upon which his ordinary signature was engraved, this was held to be a good signature within the Act. *Bennett* v. *Brumfitt*, (1867) L. R. 3 C. P. 28; 37 L. J. C. P. 25; 17 L. T. (N. S.) 213; 16 W. R. 131; 31 J. P. 824; Hopw. & Phil. 407.

As to the withdrawal of objections and the power to revive an objection after the death of the objector, and as to costs, see 41 & 42 Vict. c. 26, s. 27, *post*, p. 337.

18. The said overseers shall include the names of all persons so objected to in a list; and every town clerk shall include the names of all persons so objected to as freemen in a list, according to the form numbered (13) in the said Schedule (B); and the said overseers and town clerks respectively shall sign each of the said lists, and cause copies thereof to be written or printed, and shall publish the said list of persons objected to, and the said list of claimants as aforesaid, on or before the [*first day of September*] in the said year; and shall keep copies of the said lists, and shall allow the same, and also the notices of objection which they shall have received, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days [*of September*] in the said year, and shall deliver copies of each of such lists to any person requiring the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the Schedule (D) to this Act annexed.

List of persons objected to to be made and published.

Copies of lists and notices of objection to be kept for inspection.

The form now in use is Form L in Schedule 3 to the Registration Order, 1895, *post*, p. 587.

The lists are now to be published on or before the 25th of August, and may be inspected during the first fourteen days after that date. 48 & 49 Vict. c. 15, s. 3.

The lists of claimants are not invalidated by the neglect of the overseers to publish them in due time. See s. 26, *post*, and *Wells* v. *Stanforth*, (1885) 16 Q. B. D. 244; 55 L. J. Q. B. 12; 54 L. T. 183; Colt. 451; 2 T. L. R. 33.

19. The said overseers shall, on or before the [*twenty-ninth*] day of August in every year, deliver to the said town clerk a copy of the said list of voters made out by them as aforesaid, and a copy of the said list of persons who shall have claimed as aforesaid, and a copy of the list of persons objected to as aforesaid.

Overseers to deliver copies of lists to the town clerk.

The date is now altered to the 25th of August by 48 & 49 Vict. c. 15, s. 3.

* * * * *

22. Every precinct or place, whether extra-parochial or otherwise, which shall have no overseers of the poor, shall, for the purpose of making any claim, and making out any list directed by this Act, be deemed to be within the parish or township adjoining thereto and sharing in the right of election to which such claim or list may relate; and if such parish or place shall adjoin two or more parishes or townships situated as aforesaid, it shall be deemed to be within the least populous of such parishes or townships according to the last census for the time being.

Provision as to places having no overseers.

23. Every notice, list, register, or other document herein required to be published, shall be so published, except where some other mode or place of publication is herein expressly provided, by being fixed in some public and conspicuous situation on the outside of the outer door or outer wall near the door of the buildings hereinafter named for that purpose; (that is to say,) in the case of publication by overseers, every church and public chapel in their parish or township, including places of public worship which do not belong to the Established Church, and in the case of publication by a town clerk, the town hall, or in either

Mode of publication of notices and other documents.

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case, if there be no such building as is hereinbefore named for that purpose, then in some public and conspicuous situation within the parish or township, city, borough, or place respectively.

Publication in or near every post office and telegraph office and every public or municipal or parochial office within the parish is required by 41 & 42 Vict. c. 26, s. 9, *post*, p. 329.

Time for which publication shall be.

24. In all cases in which any notice, list, register, or other document shall, pursuant to the provisions aforesaid, be affixed on or near the door of any church, chapel, town hall, or other place, the same shall continue so fixed for a period including two consecutive Sundays at the least next after the day on or before which the same is hereinbefore required to be published; and in case the same shall be destroyed, mutilated, effaced, or removed before the expiration of such period, the party hereinbefore required to publish the same as aforesaid shall, as soon as conveniently may be, publish in like manner in its place another notice, list, register, or other document, to the like purport and effect with the notice, list, register, paper, or document so destroyed, mutilated, effaced, or removed.

Penalty for hindering publication.

25. Every person who shall wilfully destroy, mutilate, efface, or remove any notice, list, register, or other document so affixed as aforesaid, during the period during which the same is hereinbefore required to remain so affixed, shall for every such offence forfeit any sum not exceeding forty shillings nor less than ten shillings to any person who will sue for the same, to be recovered in a summary manner before any two justices of the peace.

See *Simmons* v. *Atkinson*, (1892) 8 L. T. R. 318.

List not invalidated by imperfect publication.

26. No list shall be invalidated by reason that it shall not have been affixed in every place and for the full time hereinbefore required for publication thereof, but the barrister shall proceed to revise and adjudicate upon every such list which shall have been affixed in any place and for any part of the time hereinbefore mentioned in that behalf; but nothing herein contained shall be construed to exempt the overseer, town clerk, or other person charged with the duty of publishing such list as aforesaid from the penalties of his neglect or wilful default.

If no list made out or published, former list to be in force.

27. In case no list of voters shall have been made out for any parish, township, or place in any year, or in case such list shall not have been affixed in any place hereinbefore mentioned in that behalf, the register of voters for that parish, township, or place then in force shall be taken to be the list of voters for that parish, township, or place for the year then next ensuing, and the provisions herein contained respecting any such list of voters shall be taken to apply to such register as aforesaid.

* * * * *

Barrister to notify his appointment to clerk of

31. Every such revising barrister shall notify his appointment to . . . the town clerk of every city and borough of which he shall be appointed to revise the lists; and each clerk of the peace shall as soon as possible transmit an abstract of the number of persons objected to

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the peace and town clerks, who are to transmit to him abstracts and lists.

by the overseers and by other persons in each parish and township in and for the same county, and the town clerk of every city or borough shall as soon as possible transmit an abstract of the said several lists of claimants, and the lists of persons objected to, in each parish or township in and for the same city or borough, to the said barrister, in order that proper times and places for holding courts for the revision of such lists respectively may be appointed.

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Barristers to hold courts for revising the lists of voters for boroughs, and give notice thereof to the town clerk, who is to publish the same.

33. The barrister or barristers appointed to revise the lists of voters for any city or borough shall hold an open court or courts for that purpose within such city or borough, and also within every place sharing in the election for such city or borough, between the [*fifteenth*] day of September and the [*last*] day of October both inclusive in the then current year, and such barrister or barristers shall, seven days at the least before holding any such court or courts, give notice to the town clerk of such city or borough of the time and place of holding the same; and if such barrister shall, in his discretion, deem it expedient to hold his courts at different times and places within the said city or borough, the said barrister shall in such case give notice to the said town clerk of such times and places so appointed and of the parishes allotted to each court; and the town clerk shall forthwith publish a notice of the time and place of the holding of every such court as aforesaid on the town hall, and on every church and chapel within such city or borough, or, if there be no church or chapel or town hall therein, then in some public and conspicuous place therein.

The lists are now to be revised between the 8th September and the 12th October, both inclusive. 51 & 52 Vict. c. 10, s. 6, *post*, p. 412.

In every borough containing, according to the last census, more than 10,000 inhabitants, the revising barrister must hold at least one evening sitting of his court. 36 & 37 Vict. c. 70, s. 4. As to the power of the revising barrister to adjourn his court, see s. 5 of the same Act.

Where it appears that the revising barrister has not adjudicated according to law upon objections to certain entries in the lists of voters, the Court has jurisdiction to direct him to hold a court for the purpose of completing the revision of such entries, notwithstanding that the period fixed by this section for the holding of such courts has expired. *Kent* v. *Fittall* (*No.* 2), [1908] 2 K. B. 933; 77 L. J. K. B. 1065; 99 L. T. 761; 72 J. P. 421; 2 Smith, 63; 6 L. G. R. 1047; 24 T. L. R. 830.

* * * * *

Town clerks and overseers to attend the courts, to produce lists and answer questions, &c.

35. The town clerk of every city or borough and the several overseers for the time being of every parish or township therein . . . shall attend the first court to be holden before every such barrister for every such city or borough, unless they shall have been respectively required by notice to attend at some other court, in which case they shall attend the said court as required; and the said overseers, town clerks, . . . shall, at the opening of the said court, deliver to the said barrister the several lists so made by them respectively as aforesaid, and also the original notices of claim and of objection received by them as aforesaid; and the said overseers shall also produce at the said court all rates made for the relief of the poor of their respective parishes or townships between the [*sixth day of April*]

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in the year then last past and the last day of July in the then present year; and the said town clerks, overseers, . . . shall answer upon oath all such questions as any such barrister may put to them or any of them, and produce all documents, papers, and writings in their possession, custody, or power touching any matter necessary for revising the list of voters; and every such barrister shall have power to require any assessor, collector of taxes, or other officer having the custody of any tax assessment or duplicate, or any overseer or overseers of a past year, or other person having the custody of any poor rate of the then current or any past year, or any relieving officer, . . . to attend before him at any court to be holden by him in pursuance of this Act, and they shall attend accordingly, and answer upon oath all such questions as such barrister may put to them.

Power of barrister to require attendance of overseer of past year, &c.

The 5th of January is now substituted for the 6th of April by 11 & 12 Vict. c. 90.
The revising barrister may now require any person to attend at his court and give evidence or produce documents. 41 & 42 Vict. c. 26, s. 36, *post*, p. 343.

* * * * *

Power of barrister to insert names in lists of borough voters.

38. The revising barrister shall insert in any list of voters for any city or borough the name of every person omitted who shall be proved to the satisfaction of such barrister to have given due notice of his claim to be inserted in such list, and to have been entitled on the [*last*] day of July then next preceding to have his name inserted therein in respect of the qualification described in such notice of claim.

The revising barrister need not now insert the names, but may revise the list of claimants as if it were a list of voters. 48 & 49 Vict. c. 15, s. 4 (5).
The 15th of July is now substituted for the last day of July by 41 & 42 Vict. c. 26, s. 7, *post*, p. 329.

Any person on list of voters may object to claimants.

39. It shall be lawful for any person whose name shall be on any list of voters for any county, city, or borough to oppose the claim of any person so omitted as aforesaid to have his name inserted in any list of voters for the same county, city, or borough; and such person intending to oppose any such claim shall, in the court to be holden as aforesaid for the revision of such list, and before the hearing of the said claim, give notice in writing to the revising barrister of his intention to oppose the said claim, and shall thereupon be admitted to oppose the same, by evidence or otherwise, without any previous or other notice, and shall have the same rights, powers, and liabilities as to costs, appeal, and other matters relating to the hearing and determination of the said claim, as any person who shall have duly objected to the name of any other person being retained on any list of voters, and who shall appear and prove the requisite notices as hereinafter mentioned.

* * * * *

Power of revising barristers to adjourn their courts, administer oath, &c.

41. Every revising barrister holding any court under this Act shall have power to adjourn the same from time to time, and from any one place to any other place within the same county, or within the same city or borough, but so that no such adjourned court shall be holden after the [*last*] day of October in any year; and at every court to be

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holden as aforesaid by any revising barrister the said barrister shall have power to administer an oath to all persons examined before him, and all parties, whether claiming or objecting or objected to, and all persons whatsoever, may be examined upon oath touching the matters in question; and every person taking any oath or affirmation under this Act, who shall wilfully swear or affirm falsely, shall be deemed guilty of perjury; and at the holding of such respective courts no party or other person shall appear or be attended by counsel; and every such barrister shall upon the hearing in open court finally determine upon the validity of such claims and objections, and shall for that purpose have the same powers and proceed in the same manner (except where otherwise directed by this Act) as the returning officer of any county, city, or borough, according to the laws and usages observed at elections previous to the passing of the said recited Act; and such barrister shall in open court write his initials against the names respectively expunged or inserted, and against any part of the said lists in which any mistake shall have been corrected or any omission supplied or any insertion made by him, and shall sign his name to every page of the several lists so settled.

Barrister in open court to decide upon validity of claims and objections.

The revision of the lists must now be completed by the 12th October. 51 & 52 Vict. c. 10, s. 6.

Before signing any page the revising barrister must read out audibly in open court the names expunged and inserted by him therein, and all corrections and insertions made by him. 28 & 29 Vict. c. 36, s. 15.

42. It shall be lawful for any person who, under the provisions hereinbefore contained, shall have made any claim to have his name inserted in any list, or made any objection to any other person as not entitled to have his name inserted in any list, or whose name shall have been expunged from any list, and who in such case shall be aggrieved by or dissatisfied with any decision of any revising barrister on any point of law material to the result of such case, either himself or by some person on his behalf, to give to the revising barrister in court, before the rising of the said court, on the same day on which such decision shall have been pronounced, a notice in writing that he is desirous to appeal, and in such notice shall shortly state the decision against which he desires to appeal; and the said barrister thereupon, if he thinks it reasonable and proper that such appeal should be entertained, shall state in writing the facts which according to his judgment shall have been established by the evidence in the case, and which shall be material to the matter in question, and shall also state in writing his decision upon the whole case, and also his decision upon the point of law in question appealed against; and such statement shall be made as nearly as conveniently may be in like manner as is now usual in stating any special case for the opinion of the Court of Queen's Bench upon any decision of any court of quarter sessions; and the said barrister shall sign the same; and the said appellant, or someone on his behalf, shall at the end of the said statement make a declaration in writing under his hand to the following effect, that is to say, "I appeal from this decision;" and the said barrister shall then indorse upon every such statement the name of the county and polling district, or city and

Appeal from revising barrister's decision on points of law.

Revising barrister to prepare a statement of facts.

Appellant to make a declaration in writing.

Revising barrister to indorse on statement the names of

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parties, &c.; and deliver a copy to either party requiring it.

borough, and of the parish or township to which the same shall relate, and also the Christian name and surname and place of abode of the appellant and of the respondent in the matter of the said appeal, and shall sign and date such indorsement; and the said barrister shall deliver such statement, with such indorsement thereon, to the said appellant, to be by him transmitted to Her Majesty's [*Court of Common Pleas at Westminster*] in the manner hereinafter mentioned; and the said barrister shall also deliver a copy of such statement, with the said indorsement thereon, to the respondent in such appeal who shall require the same.

The procedure on appeal from the decision of a revising barrister is now regulated by the Registration Act, 1908 (8 Edw. 7, c. 21), *post*, p. 663. Any person aggrieved may apply to the High Court for a rule calling on the revising barrister to state a case. 41 & 42 Vict. c. 26, s. 37, *post*, p. 344.

Who shall be respondent on appeal.

43. In the matter of every such appeal the party in whose favour the decision appealed against shall have been given shall be the respondent; but if there be no such party, or if such party, or some one on his behalf, shall in open court decline, and state in writing that he declines, to support the decision appealed against as respondent, then and in every such case it shall be lawful for the said revising barrister to name any person who may be interested in the matter of the said appeal, and who may consent, or the overseers of any parish or township, or the town clerk of any city or borough, to be, and such person so consenting, or such overseers or town clerk respectively so named, shall be deemed to be the respondent or respondents in such appeal.

The revising barrister must, if required by the appellant, and may in any case, name the town clerk as respondent, either alone or in addition to any of the persons referred to in this section; and the expenses incurred by a town clerk as respondent are to be allowed to him as expenses incurred by him in respect of the revision of the lists. 41 & 42 Vict. c. 26, s. 38, *post*, p. 344.

Power to consolidate appeals.

44. If it shall appear to any revising barrister that the validity of any number of such claims or objections determined by him at any court as aforesaid depends and has been decided by him upon the same point or points of law, and the parties, or any of them, aggrieved by or dissatisfied with his decision thereon, shall have given notice of an intention to appeal therefrom, it shall in such case be lawful for the said barrister to declare that the appeals against such decision ought to be consolidated, and the said barrister shall in such case state in writing the case, and his decision thereon in manner hereinbefore mentioned, and that several appeals depend upon the same decision, and ought to be consolidated, and shall . . . sign the same, as hereinbefore mentioned, and thereupon it shall be lawful for the said barrister to name any person interested, and consenting, for and on behalf of himself and all other persons in like manner interested in such appeals, to be the appellant or respondent respectively in such consolidated appeal, and to prosecute or answer the said appeal, in like manner as any appellant or respondent might in his own case under the provisions of this Act, and the person so named appellant in such consolidated

appeal, or some one on his behalf, shall, at the end of the said statement, make and sign a declaration in the form or to the effect following; (that is to say,) Section 44.

"I, for myself and on behalf of all the other persons who are interested as appellants in this matter, and whose names are hereunder written, do appeal against this decision, and agree to prosecute this appeal."

And the person so named respondent in such consolidated appeal, or some one on his behalf, shall in like manner make and sign a declaration in writing in the form or to the effect following; (that is to say,)

"I for myself and on behalf of all the other persons interested as respondents in this matter, and whose names are hereunder written, do agree to appear and answer this appeal."

And the name, and, where necessary, the particulars of the qualification of every party intended to be joined in such consolidated appeal, shall be written under the aforesaid declaration of the appellant or respondent respectively to which they may respectively refer; Provided always, that it shall be lawful for the said barrister, if necessary, in any case to name the overseers of any parish or township, or the town clerk of any city or borough, to be, and they or he so named shall be, the respondents or respondent in such consolidated appeal, without any such declaration being made or signed by them or him as hereinbefore mentioned.

Overseers or town clerk may be named as respondents.

The statement need not be read in open court. See the note to s. 42, *ante*.

45. In and with regard to every such consolidated appeal the like proceeding shall be had and taken and the like rules and regulations shall apply as in the case of any other appeal under this Act; and every order, judgment, or decision of the said [*Court of Common Pleas*] shall be equally valid and effectual for all the purposes of this Act, and binding and conclusive upon all the parties named in or referred to as parties to such consolidated appeal as aforesaid; and if in any case all or any of the parties to such consolidated appeal shall make or enter into any agreement as to the mode of contributing among themselves to the costs and expenses of such appeal, the said agreement may, upon the application of any party or parties thereto, be made a rule of the said [*Court of Common Pleas,*] if the said court shall think fit: Provided always, that if any such consolidated appeal shall not be duly prosecuted or answered, it shall be lawful for the said [*Court of Common Pleas,*] or for the Lord Chief Justice or any judge of the said court, to give to any party or parties interested in such appeal, upon his or their application, the conduct and direction of the said appeal, or of the answer thereto respectively, as the case may require, instead of or in addition to any person named as aforesaid as appellant or respondent, and in such manner and upon such terms as the said court or Lord Chief Justice or judge may think fit and order, or to make such other order in the case as may seem meet: Provided also, that if, after the said barrister shall as aforesaid have declared that the appeal in any case ought to be with others

Consolidated appeals to be conducted as any single appeal.

Agreement for contribution to costs may be made a rule of court.

If consolidated appeal not duly prosecuted or answered, the court or a judge may give conduct of it or of the answer to other persons.

Section 45.

consolidated, any party interested in such appeal shall object and refuse to be a party to or to be bound by any such consolidated appeal, then and in such case the appeal in which such person is interested may proceed separately, but such person so refusing or objecting shall be liable to pay costs to the other party, but shall not be entitled to receive any costs of or in such appeal, unless the said court otherwise order.

Appeals from revising barristers are now heard by the King's Bench Division of the High Court under 36 & 37 Vict. c. 66, s. 34.

Power to barrister to give costs in certain cases to parties claiming or objecting.

46. If in any case it shall appear to any revising barrister holding any court as aforesaid that any person shall under this Act have made or attempted to sustain any groundless or frivolous and vexatious claim or objection or title to have any name inserted or retained in any list of voters, it shall be lawful for the said barrister, in his discretion, to make such order as he shall think fit for the payment by such person of the costs or of any part of the costs of any person or persons in resisting such claim or objection or title; and in every such case the said barrister shall make an order in writing, specifying the sum which he shall order to be paid for such costs, and by and to whom and when and where the same sum shall be paid, and shall date and sign the said order, and deliver it to the person or persons to whom the said sum shall therein be ordered to be paid: Provided always, that the said sum so ordered to be paid by way of costs shall not in any case exceed the sum of [*twenty shillings*]: Provided also, that such order for the payment of costs as aforesaid may be made in any case, notwithstanding any party shall have given notice of his intention to appeal against any decision of the revising barrister in the same case; but in case of such appeal the said order for the payment of costs shall be suspended, and shall abide the event of such appeal, unless the court of appeal shall otherwise direct; but no appeal shall be allowed or entertained against or only in respect of any such order for the payment of costs: Provided also, that whenever any revising barrister shall have made any such order for the payment of any sum of money for costs by any person who shall have made any objection as aforesaid, it shall not be lawful for the said barrister to hear or admit proof of any other objection or notice of objection made or signed by the same person until the sum of money so ordered to be paid by him for costs be paid to the person entitled to receive the same, or deposited in the hands of the said barrister in court, for the use of the person so entitled.

Every separate ground of objection is to be treated as a separate objection, and costs may be allowed up to five pounds upon any one vote. 28 & 29 Vict. c. 36, ss. 8, 14. See further as to costs, 41 & 42 Vict. c. 26, s. 27 (3), *post*, p. 337.

* * * * *

Power to barristers to fine overseers for neglect of duty.

51. Any overseer of any parish or township who shall wilfully refuse or neglect to make out any list, or who shall wilfully neglect to insert therein the name of any person who shall have given due notice of claim, or who in making out the list of voters for any city or borough shall wilfully and without any reasonable cause omit the name of any

person duly qualified to be inserted in such list, or who shall wilfully and without reasonable cause insert in such list the name of any person not duly qualified, or who shall wilfully refuse or neglect to publish any notice or list, or copy of the part of the register of voters relating to his parish or township, at the time and in the manner required by this Act, or who shall wilfully refuse or neglect to deliver to the clerk of the peace the copy of the lists of claimants and of persons objected to, and the copies of the register, as required by this Act, or who shall wilfully refuse or neglect to deliver to the town clerk of the city or borough the copies of the several lists as required by this Act, or who shall wilfully refuse or neglect to attend the court for revising the lists of voters of his parish or township, or to attend any revising barrister when required by any summons as aforesaid, or who shall wilfully refuse or neglect to deliver to the barrister or barristers holding any such court the several lists to be made out by them as aforesaid, or who shall be wilfully guilty of any other breach of duty in the execution of this Act, shall for every such offence be liable to pay by way of fine a sum of money not exceeding five pounds nor less than twenty shillings, to be imposed by and at the discretion of any barrister holding any court for the revision of any list of the parish or township of such overseer: Provided always, that nothing herein contained as to any fine as aforesaid shall affect or abridge any right of action against any overseer or other person liable to any fine as aforesaid, or any liability such overseer or other person may incur under or by virtue of this Act or the said recited Act. Section 51.

The provisions of this section are extended by 41 & 42 Vict. c. 26, s. 29, *post*, p. 341, to breaches of duty by the overseers in the execution of that Act.

52. Every revising barrister, when and so often as he shall impose any such fine as aforesaid, shall at the same time in open court, by an order in writing under his hand, stating the sum payable for such fine, direct by and to whom and when the same shall be paid, and the person to whom the said sum shall be so ordered to be paid shall receive the same, and in every case where the offence for which the said fine shall have been so imposed shall relate to the formation of the register of voters for any county he shall pay over the sum so received by him to the clerk of the peace of the same county, and in every case where such offence shall relate to the formation of the register of voters for any city or borough, he shall pay over the sum so received by him to the town clerk of the same city or borough, . . . as the case may require. Fines, to whom payable, and to what purpose to be applied.

As to the application of these fines in a municipal borough, see 41 & 42 Vict. c. 26, s. 30, *post*, p. 341.

53. The clerk of the peace of every county and the town clerk of every city or borough respectively shall keep an account of all moneys to be received by him or them for or on account of the sale of any copies of the register as aforesaid, or for or by way of fine imposed as aforesaid; and the said clerk of the peace shall pay over or account for all such moneys received by him to the treasurer of the same Clerk of the peace and town clerk to account for and pay over all moneys received by them.

Section 53.

county, to be applied in aid of the county rate; and the said town clerk shall pay over or account for all such moneys so received by them* to and amongst the overseers of the several parishes and townships within every city or borough; and the share of each parish or township shall be calculated as nearly as may be according to the same relative proportion as the number of persons whose names shall appear in the list of the said parish or township shall bear to the number in all the other lists upon the same register; and the said moneys, together with all moneys received by any overseers from the sale by them of any lists, shall be paid and applied by the said overseers in aid of the moneys collected for the relief of the poor.

* *Sic.*

* * * * *

Expenses of town clerks and returning officers, how to be defrayed.

55. All the expenses incurred by any town clerk or returning officer of any city or borough in carrying into effect the provisions of this Act shall be defrayed out of the moneys to be collected for the relief of the poor in the several parishes and townships within the same city or borough; and the sum to be contributed by every such parish or township shall be calculated, as nearly as may be, according to the same relative proportion as the number of persons whose names shall appear in the list of the said parish or township shall bear to the number in all the other lists upon the same register; and an account of all the said expenses so incurred, and also an account of the sum to be contributed for defraying the same by each parish or township as aforesaid, shall, as soon as may be after the said expenses shall have been so incurred, be laid before the common council or town council of the said city or borough, or, if there be no such council in any city or borough, then before the justices of the peace at the quarter sessions to be holden in and for the county in which the same city or borough is situate; and the said council or the said justices respectively shall, when they allow the said accounts, make and give to the said town clerk a certificate of the total sum allowed by such council or justices in respect of the said expenses, and also a certificate of the sum to be paid by and as the contribution of each of the said parishes or townships towards defraying the same; and thereupon it shall be lawful for the overseers of every such parish or township, and they are hereby required, out of the first moneys to be collected for the relief of the poor, to pay the sum in such certificate mentioned to be paid by and as the contribution of the said parish or township to the said town clerk.

See 41 & 42 Vict. c. 26, s. 30, *post*, p. 341.

* * * * *

Expenses of overseers, how to be defrayed.

57. An account of all expenses incurred by the overseers of every parish or township in carrying into effect the provisions of this Act shall be laid before the revising barrister at the court at which the list of voters for such parish or township shall be revised; and the said barrister shall sign and give to the said overseers a certificate of the sum which he shall allow to be due to them in respect of the said expenses; and it shall be lawful for the said overseers to receive the sum so certified to be due to them from and out of the first moneys

thereafter to be collected for the relief of the poor in the same parish or township. Section 57.

The revising barrister's certificate is conclusive, but any ratepayer has a right to inspect the overseers' account and to object to any items in it before it is allowed. 31 & 32 Vict. c. 58, s. 32.

This section relates only to out-of-pocket expenses incurred by the overseers; it does not authorize any allowance to be made to them for their time or trouble. *Reg.* v. *Kingston-upon-Hull*, (1853) 2 E. & B. 182; 22 L. J. Q. B. 324; 21 L. T. (O. S.) 101; 17 J. P. 615; *Reg.* v. *Allday*, (1857) 7 E. & B. 799; 26 L. J. Q. B. 292; 29 L. T. (O. S.) 179; 5 W. R. 625; 21 J. P. 388.

* * * * *

60. All appeals or matters of appeal from or in respect of any decision of any revising barrister entertained in manner hereinbefore mentioned shall be prosecuted, heard, and determined in and by Her Majesty's [*Court of Common Pleas at Westminster*] according to the ordinary rules and practice of that court with respect to special cases, so far as the same may be applicable, and not inconsistent with the provisions of this Act, or in such manner and form, and subject to such rules and regulations, as the said court from time to time, by any rule or order made for regulating the practice and proceedings in such appeals, shall order and direct. Appeals to be heard by the Court of Common Pleas.

See the note to s. 45, *ante*.

* * * * *

62. * * * * *

Sections 62 and 63, which related to the entry and hearing of appeals from revising barristers, have been repealed by the Registration Act, 1908, *post*, p. 663. The procedure on such appeals is now regulated by the provisions of that Act.

64. No appeal or matter of appeal whatsoever shall in any case, except where the conduct and direction of the appeal, or of the answer thereto, shall have been given by order of the [*Court of Common Pleas*] or of any judge thereof to any person, be entertained or heard by the said court unless notice shall have been given by the appellant to the masters of the said court at the time and in the manner hereinbefore mentioned; and no appeal shall be heard by the said court in any case where the said respondent shall not appear, unless the said appellant shall prove that due notice of his intention to prosecute such appeal was given or sent to the said respondent ten days at least before the day appointed for the hearing of such appeal: Provided always, that if it shall appear to the said court that there has not been reasonable time to give or send such notice in any case, it shall be lawful for the said court to postpone the hearing of the appeal in such case, as to the said court shall seem meet. No appeal to be entertained unless notice given.

See the note to s. 62.

65. No appeal or notice of appeal under this Act shall be received or allowed against any decision of any revising barrister upon any question of fact only, or upon the admissibility or effect of any evidence or admission adduced or made in any case to establish any matter of No appeal on questions of fact.

Section 65. Court may remit case to revising barrister.

fact only: Provided always, that if the said court shall be of opinion in any case that the statement of the matter of the appeal is not sufficient to enable them to give judgment in law, it shall be lawful for the said court to remit the said statement to the revising barrister by whom it shall have been signed, in order that the case may be more fully stated.

Where a revising barrister admitted hearsay evidence in support of a claim without deciding whether such evidence was legally admissible or not, it was held that this section did not preclude the court from deciding that the revising barrister was not entitled to act upon such evidence. *Storey* v. *Bermondsey Town Clerk*, [1910] 1 K. B. 203; 79 L. J. K. B. 349; 102 L. T. 52; 74 J. P. 94; 26 T. L. R. 190. See note (*g*) to s. 28 of the Parliamentary and Municipal Registration Act, 1878, *post*, p. 341.

Decisions of court to be final.

66. Every judgment or decision of the said court shall be final and conclusive in the case upon the point of law adjudicated upon, and shall be binding upon every committee of the House of Commons appointed for the trial of any petition complaining of an undue election or return of any member or members to serve in Parliament.

The High Court may now give leave to appeal to the Court of Appeal, whose decision is final. 44 & 45 Vict. c. 68, s. 14. See *Unwin* v. *McMullen*, *ante*, p. 79.

Parliamentary election petitions are now tried by two judges under 42 & 43 Vict. c. 75, s. 2.

Decisions of court to be notified to the sheriff or returning officer, and register to be altered conformably.

67. Whenever by any judgment or order of the said court any decision or order of any revising barrister shall be reversed or altered so as to require any alteration or correction of the register of voters for any county, or for any city or borough, notice of the said judgment or order of the said court shall be forthwith given by the said court to the sheriff or returning officer, as the case may be, having the custody of such register, and the said notice shall be in writing under the hand of one of the masters of the said court, and shall specify exactly every alteration or correction to be made, in pursuance of the said judgment or order, in the said register; and such sheriff or returning officer respectively shall, upon the receipt of the said notice, alter or correct the said register accordingly, and shall sign his name against every such alteration or correction in the said register, and shall safely keep and hand over to his successor every such notice received by him from the said court as aforesaid, together with the said register.

Where any alteration is required in the burgess roll, the notice is to be sent to the town clerk and the alteration is to be made by him. 41 & 42 Vict. c. 26, s. 35, *post*, p. 343.

As to the jurisdiction of the Court to direct a revising barrister to hold a court for the purpose of completing the revision notwithstanding that the period fixed for the holding of such courts has expired, see the note to s. 33, *ante*.

Copies of decisions on appeals to be admissible in evidence.

68. A copy of any order or decision of the said court, such copy purporting to be signed by one of the masters of the said court, shall be sufficient evidence in all cases, without proof of the signature of the said master, and shall have the like force and effect as any entry made in any list or register of voters under this or the said recited Act.

Appeal pending not to affect right of voting.

69. No right of voting at any election of a member or members to serve in Parliament shall be affected by any appeal pending in the said court at the time of the issuing of the writ for such election, but

it shall be lawful for every person to exercise the right of voting at such election as effectually, and every vote tendered thereat shall be as good, as if no such appeal were pending; and the subsequent decision of any appeal which shall be pending in the said court at the time of the issuing of the writ for any such election shall not in any way whatsoever alter or affect the poll taken at such election, nor the return made thereat by the returning officer.

Section 69.

No decision after election to affect the result of such election.

70. . . . Provided always, that it shall not be lawful for the said court in any case to make any order for costs against or in favour of any respondent or person named as respondent as aforesaid, unless he shall appear before the said court in support of the decision of the revising barrister in question.

Court of appeal may give costs.

Costs may be allowed against a town clerk who has been named as respondent, whether he appears or not. 41 & 42 Vict. c. 26, s. 38, *post*, p. 344.

71. In case any sum of money by the order of any revising barrister as aforesaid directed to be paid by any person by way of fine or for costs shall not be paid according to the terms of such order, it shall be lawful for any justice of the peace and he is hereby required, upon proof before him that a true copy of the said order hath been served upon or left at the usual place of abode of the person in the said order directed to pay such sum, and that the said sum hath been demanded of such person, and that he hath refused or neglected to pay the same, by warrant under his hand and seal to order the said sum of money, together with the costs of and attending the said warrant, to be levied by distress and sale of the goods and chattels of such person so making default which may be found within the jurisdiction of the said justice; and the overplus, if any, after the said sum of money and costs and the charges of such distress and sale are deducted, shall be returned, upon demand, to the owner of the said goods and chattels: Provided always, that no certiorari or other writ or process for the removal of any such order or warrant, or of any order or warrant to be made or issued on account of a false charge of personation in the manner hereinafter provided, or any proceeding thereon respectively, into any of Her Majesty's courts at Westminster, shall be allowed or granted.

Costs and fines to be recovered by distress and sale of the party's goods.

No certiorari allowed.

* * * * *

85. It shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

Agents may be appointed by candidates to detect personation at the time of polling.

Sections 85—89 of this Act are incorporated by s. 24 of the Ballot Act, 1872, *post*, p. 265, and are made applicable to municipal elections by s. 86 of the Municipal Corporations Act, 1882, *ante*, p. 72.

Section 86.

Returning officer may order persons charged with personation to be taken into custody.

86. If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words, "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book.

Vote not to be rejected if questions answered in the affirmative.

Persons charged with personation to be taken before two justices.

Bail to be taken in certain cases.

87. Every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody: Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

If justices are satisfied that the person charged has been guilty of personation they are to commit him for trial.

88. If on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices

to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors. Section 88.

89. If the said justices shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's superior courts of record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

If justices are satisfied that the charge is unfounded, they are to order compensation.

If party falsely charged accepts compensation, no action to be brought.

* * * * *

101. Throughout this Act, in the construction thereof, except there be something in the subject or context inconsistent with or repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts or division of a county, respectively returning a knight or knights of the shire to serve in Parliament; and the words "city or borough" shall extend to and mean any city, borough, town corporate, cinque port, district, or place within England and Wales returning a member or members to serve in Parliament, other than counties at large, and ridings, parts and divisions of counties at large, and to every place sharing in the election of a member for any city or borough, and shall also include the town of Berwick-upon-Tweed; the words "clerk of the peace" shall comprehend and apply to any deputy

Interpretation clause.

Meaning of "county:"

"City or borough:"

"Clerk of the peace:"

Section 101. or other person executing the duties of such clerk of the peace; and

"Town clerk:" the words "town clerk" shall, except in regard to the cities of London and Westminster and the borough of Southwark, extend to and mean any person executing the duties of town clerk, or if in any city or borough there shall be no such officer as town clerk, then to any officer executing the same or like duties as usually devolve upon the town clerk, or if in any city or borough there be no such person, then to the returning officer of such city or borough, or to such person as the returning officer may appoint for that purpose, which he is hereby

"Returning officer:" authorized to do; and the words "returning officer" shall apply to every person or persons to whom by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be

"Parish or township:" called; and the words "parish or township" shall extend to and mean every parish, township, village, hamlet, district, or place maintaining

"Overseers" or "overseers of the poor." its own poor; and the words "overseers" or "overseers of the poor" shall extend to and mean all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called, and in whatsoever manner they may be appointed, and all matters by this Act directed to be done by the overseers of a parish or township may be lawfully

Mode of service of notices. done by the major part of such overseers; and wherever any notice is by this Act required to be given or sent to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business, or shall be sent by the post, free of postage, or the postage thereof being first paid, addressed to the overseers of the particular parish or township, naming the parish or township, and the county, city, or borough respectively, to which the notice to be so sent may relate, without adding any place of abode of such overseers; and wherever by this Act any notice is required to be given or sent to any person or persons whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post, free of postage, or the postage thereof being first paid, addressed with a sufficient direction to the person or persons to whom the same ought to be given or

Justices, sessions, clerks of the peace, and treasurers of counties. sent, at his or their usual place of abode; and all provisions in this Act relative to any matters to be done by or with regard to justices of the peace for counties, or sessions of the peace for counties, or clerks of the peace for counties, or treasurers of counties, shall extend to the justices, sessions, clerks of the peace, and treasurers of the several ridings of Yorkshire and parts of Lincolnshire; and the town clerk for the time being for the borough of Newport in the Isle of Wight shall for the purposes of this Act be deemed and taken to be the clerk of the peace for the county of the Isle of Wight; and all the said respective justices, sessions, and clerks of the peace shall have power to do the several matters required by this Act, as well within places of

Misnomer not to vitiate. exclusive jurisdiction as without; and no misnomer or inaccurate

description of any person, place, or thing named or described in any schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in anywise prevent or abridge the operation of this Act with respect to such person, place, or thing, provided that such person, place, or thing, shall be so denominated in such schedule, list, register, or notice, as to be commonly understood; and the word "oath" shall include affirmation, where by law such affirmation is required or allowed to be taken in place of an oath; and where the subject or context requires it, every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things. Section 101. "Oath." Singular. Plural.

The provisions of this section as to the service of notices are made applicable to the service of notices under 41 & 42 Vict. c. 26, by s. 40 of that Act, *post*, p. 345.

* * * * *

SCHEDULE (D).

No. 1.

Table of Rates of Payment to be demanded and paid for any list or copy of a list (other than a register), where a payment is required and authorized by this Act.

For any list or copy of a list containing any number of persons' names—

	s.	*d.*
Not exceeding 100 names	0	6
Exceeding 100 and not exceeding 200	1	0
Exceeding 200 and not exceeding 300	1	6
Exceeding 300 and not exceeding 400	2	0
Exceeding 400	2	6

THE CRIMINAL JUSTICE ADMINISTRATION ACT, 1851.

(14 & 15 VICT. c. 55.)

An Act to amend the Law relating to the Expenses of Prosecutions, and to make further provision for the Apprehension and Trial of Offenders in certain cases. [1st August, 1851.]

* * * * *

Clerks of the peace, &c., may be paid by salaries in lieu of fees.

9. It shall be lawful for the justices of the peace at their general or quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, notice being given at the preceding quarter sessions that a motion will be made for such purpose, and the council or other governing body in every borough in England and Wales, from time to time, if they see fit so to do, to recommend to one of Her Majesty's principal Secretaries of State that the clerks of the peace, the clerks of special and petty sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks as aforesaid, be paid by salaries in lieu of fees and other payments, or where any such clerks are for the time being paid by salaries, by virtue of any order made under this Act or otherwise, to recommend that the amounts of all or any of the salaries for the time being payable be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees or the reconsideration of the amounts of any salaries is recommended, to state the amount of salary which in the opinion of such justices, council, or governing body should in each case be paid; and every such recommendation being signed by the chairman of the court of general or quarter sessions, or the mayor or other head officer of the borough, shall be transmitted to the Secretary of State; and it shall be lawful for such Secretary of State, when any such recommendation is so made to him, by order under his hand, if he so think fit, to direct that all or any of the clerks to which such recommendation refers be paid by salary, and to fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or to direct that any such clerk for the time being paid by salary be paid by fees in lieu of salary; and such Secretary of State shall cause copies of every order made under this enactment affecting any clerk of the peace, or any clerks of special sessions or petty sessions, or clerks to the justices within the district of any clerk of the peace, to be transmitted to such clerk of the peace,

Section 9.

to be by him distributed, where occasion shall require, to such other clerks as aforesaid; and the salary for the time being payable to any such clerk under any such order shall be paid out of any county rate or rate in the nature of a county rate made in the county, riding, division, or liberty, or out of the borough fund of the borough, as the case may be, for or in which such clerk of the peace or other clerk to whom the same is payable is appointed or acts: Provided always, that in fixing the amount of any salary to be paid to any clerk of the peace or other clerk appointed before the passing of this Act regard shall be had to the tenure of his office and to his rights in respect thereof, but no clerk of the peace or other such clerk as aforesaid appointed after the passing of this Act shall be entitled to any compensation on account of any reduction of his emoluments occasioned by any order made under this enactment: Provided also, that no order shall be made in pursuance of any recommendation of the council or governing body of any borough in relation to the mode of payment or the amount of salary of any such clerk other than the clerk of the peace for such borough, unless the justices of such borough at a meeting of such justices approve of such recommendation, and such approval be certified to such Secretary of State, under the hand of the chairman of such meeting.

So much of this and the next section as empowers a Secretary of State to direct that a clerk be paid by fees in lieu of salary (either generally or in respect of excepted business) has been repealed by s. 10 of the Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), *post*, p. 327.

Certain business may be excepted in fixing the salaries.

10. Provided that any such court of sessions, or council, or governing body may, where they see fit, recommend that any description (to be specified in the recommendation) of the business of any clerk whom they may recommend to be paid by salary should not be included in fixing the amount of such salary, but that such clerk should be remunerated for the same by such fees or other payments as may be payable to him in respect thereof; and where any order is made by the Secretary of State in pursuance of such recommendation as last aforesaid, such clerk shall be entitled to receive, for his own use, the like fees or payments in respect of the business in such recommendation specified in this behalf as he would be so entitled to receive if not paid by salary; and, save as aforesaid, where any clerk is paid by salary under any order made by virtue of this Act, such salary shall include and be deemed the remuneration for all business which such clerk may, by reason of his office, be called on to perform; and no other payment shall be made for any such business, or for or to a deputy of any such clerk.

Clerks paid by salaries to account for fees.

11. Save as hereinbefore provided, all the fees which any such clerk as aforesaid would have been for the time being entitled to receive to his own use if such order had not been made shall, so long as any order for payment of such clerk by salary in lieu of fees is in force, be by him received and paid in any county, riding, division, or liberty to the treasurer in aid of the county rate or rate in the nature of a county rate of such county, riding, division, or liberty, and in any borough to the treasurer in aid of the borough fund, and such fees shall be accounted for from

Section 11.

time to time in such manner and under such regulations as the justices at quarter sessions, or in any borough the council or other governing body may direct.

The fees are now to be accounted for quarterly. See s. 9 of the Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), *post*, p. 327.

Fees may be remitted by justices.

12. Where any clerk is paid by salary by virtue of any order made under this Act, any justices or justice before whom any proceeding is had, whereon a fee is payable which should be accounted for by such clerk under this Act, or before whom any person is summoned for non-payment of any such fee, may remit such fee in whole or in part for poverty or other reasonable cause, in their or his discretion, and in every such case the justices or justice by whom any fee is wholly or in part remitted shall cause an entry to be made, in a book or books to be kept for that purpose by such clerk, of the nature and amount of the several fees so remitted, and of the reason for the remission in such case, which entry shall be signed by the justice, or two or more of the justices authorizing such remission, and shall be a sufficient voucher to discharge the clerk therefrom.

* * * * *

THE COUNTY AND BOROUGH POLICE ACT, 1856.

(19 & 20 Vict. c. 69.)

An Act to render more effectual the Police in Counties and Boroughs in England and Wales. [21st July, 1856.]

* * * * *

Her Majesty in Council, on representations from boroughs, may arrange terms of consolidation with counties.

5. In case it be represented to one of Her Majesty's principal Secretaries of State by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county and borough in the manner provided by the fourteenth section of the said Act of the third and fourth years of Her Majesty, and that such consolidation has not been effected, it shall be lawful for such principal Secretary of State to inquire into the terms of consolidation proposed, and to report thereon to Her Majesty in Council; and it shall be lawful for Her Majesty, with the advice of her Privy Council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned Act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for Her Majesty, with the advice of her Privy Council, at any time and from time to time to vary the terms of any such consolidation, or at any time to determine such consolidation upon such terms as to Her Majesty in Council may seem just.

Power to Her Majesty to vary such terms from time to time.

See 3 & 4 Vict. c. 88, s. 14, *ante*, p. 215.

County constables to have the like powers, &c., in boroughs as borough constables have in the county.

6. The constables of every county appointed under the said Acts of the second and third, and third and fourth years of Her Majesty, or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges, and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables for conducting themselves in the execution of their office.

Section 6.

The Acts here referred to are 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88. As to the power of county constables to execute in a borough a warrant issued by county justices and not backed by any justice of the borough, see *Reg.* v. *Cumpton*, *ante*, p. 135. See also 22 & 23 Vict. c. 32, s. 2, *post*, p. 245.

Constables to perform duties connected with the police as directed by justices or watch committees.

7. The constables acting under the said Acts of the second and third, and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require.

The provisions of 5 & 6 Will. 4, c. 76, which are here referred to, are now replaced by those contained in ss. 190—196 of the Municipal Corporations Act, 1882, *ante*, pp. 133—136.

* * * * *

Borough constables disqualified from voting at certain elections.

9. No head or other constable already appointed or hereafter to be appointed for any borough, under the said Act of the fifth and sixth years of King William the Fourth, except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, [*be capable of giving his vote for the election of any person to any municipal office in such borough, or for the election of a member to serve in Parliament for such borough or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county, nor shall any such constable,*] by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in Parliament for any such borough or county ; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one-half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the borough : Provided always, that nothing herein contained shall subject any constable to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

The words in brackets have been repealed partly by 50 & 51 Vict. c. 9, s. 1, and partly by 56 & 57 Vict. c. 6, s. 1, *post*, p. 528. A similar provision relating to county constables will be found in 22 & 23 Vict. c. 32, s. 3, *post*, p. 245.

* * * * *

Annual statement as to crime in counties and boroughs to be furnished to Secretary of State.

14. The justices of every county and the watch committee of every borough shall, [*in the month of October in*] every year, transmit to one of Her Majesty's principal Secretaries of State a statement, in such form as one of the said Secretaries of State may from time to time direct, [*for the year ending the twenty-ninth day of September then last,*] of the number of offences reported to the police within such county or

borough respectively, the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within such county or borough which such justices or watch committee may think it material to furnish, and a classified abstract of all such reports and returns shall be annually prepared and laid before Parliament. Section 14.

The annual statement required by this section is now to be made for each calendar year. 55 & 56 Vict. c. 38, s. 1, *post*, p. 521.

Power to Her Majesty to appoint inspectors for inquiring into state and efficiency of the police in counties and boroughs, &c.

15. It shall be lawful for Her Majesty, by warrant under her royal sign manual, to appoint during Her Majesty's pleasure three persons as inspectors under this Act, to visit and inquire into the state and the efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge-rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal Secretaries of State, who shall cause such reports to be laid before Parliament; and such inspectors shall be paid, out of such money as may be provided by Parliament for the purpose, such salaries and allowances as shall be determined by the [*Commissioners of Her Majesty's*] Treasury.

On certificate of Secretary of State that an efficient police has been established in any county or borough, one-fourth of the charge for pay and clothing to be paid by the Treasury.

16. Upon the certificate of one of Her Majesty's principal Secretaries of State, that the police of any county or borough established under the provisions of the said Acts and this Act or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the [*Commissioners of Her Majesty's*] Treasury to pay from time to time, out of the moneys provided by Parliament for the purpose, such sum towards the expenses of such police, for the year mentioned in such certificate, as shall not exceed one-fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of the said Act of the third and fourth years of Her Majesty: Provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the justices of such county or to the watch committee of such borough, who may address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee as aforesaid, shall be laid before Parliament.

The limit placed by this section on the amount that might be paid by the Treasury was repealed by 38 & 39 Vict. c. 48, s. 2, a temporary Act which was not continued in force after 1889. So much of this section as authorises a payment to be made by the Treasury is now superseded by s. 24 of the Local Government Act, 1888, *post*,

Section 16. p. 418, and one-half of the costs of the pay and clothing of a borough police force is now payable to the council of the borough by the county council under s. 24 (2) (j) and s. 25 of that Act, except where the Secretary of State withholds his certificate as to the efficiency of the force under this section.

* * * * *

End to agreement under s. 14 of 3 & 4 Vict. c. 88.

20. No agreement made under section fourteen of the said Act of the third and fourth years of Her Majesty shall be put an end to without the sanction of one of Her Majesty's principal Secretaries of State.

See 3 & 4 Vict. c. 88, s. 14, *ante*, p. 215.

* * * * *

Interpretation of certain terms.

30. The word "county" shall in this Act have the same meaning as is assigned to such word in the said Act of the third and fourth years of Her Majesty, except as to the soke or liberty of Peterborough in the county of Northampton, which for all purposes of this and the several recited Acts shall be deemed and taken to be a county of itself; and the several provisions in this Act and the said recited Acts shall apply and operate in, for, and concerning the said soke or liberty accordingly; and the word "borough" shall mean any city, borough, or place incorporated under the provisions of the said Act of the fifth and sixth years of King William the Fourth, or which has otherwise become subject to the provisions of the same Act.

The reference to 5 & 6 Will. 4, c. 76, is to be read as referring to the Municipal Corporations Act, 1882. See s. 242 of that Act, *ante*, p. 160.

31. The said Acts of the second and third and of the third and fourth years of Her Majesty and this Act shall be construed together as one Act.

THE COUNTY AND BOROUGH POLICE ACT, 1859.

(22 & 23 Vict. c. 32.)

An Act to amend the Law concerning the Police in Counties and Boroughs in England and Wales. [13th August, 1859.]

* * * * *

County constables not to be required to act in any borough.

2. No county constable shall, as such constable, be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent; and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough; and no constable of any borough having a separate police establishment shall as such constable be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee in case of special emergency.

See 19 & 20 Vict. c. 69, ss. 6 and 7, *ante*, pp. 241, 242.

County constables not to vote in certain municipal elections.

3. No chief or other constable already appointed or hereafter to be appointed for any county, under the Act of the session holden in the second and third years of Her Majesty, chapter ninety-three, or the said Act of the third and fourth years of Her Majesty, or the said Act of the nineteenth and twentieth years of Her Majesty, shall during the time he continues to be such constable [*be capable of giving his vote for the election of any person to any municipal office in any borough within such county, or in any other borough in which such constable has authority, nor shall any such constable*], by word, message, writing, or in other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction by any person who shall sue for the same within six months after the commission of the offence, and one-half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the county, to be by him applied for the purposes of the police of the county.

The words in brackets have been repealed by 56 & 57 Vict. c. 6, s. 1, *post*, p. 528. A similar provision relating to borough constables is contained in 19 & 20 Vict. c. 69, s. 9, *ante*, p. 242.

Section 4.

Withdrawal from duty without leave.

4. In case any constable under the said Acts of the second and third years, third and fourth years, and nineteenth and twentieth years of Her Majesty, or any of them, shall resign or withdraw himself from his duty without such leave or notice as is required by the said section, such resignation or withdrawal shall be notified in writing by the chief constable or by the superintendent under whom the offending constable may have been placed to the treasurer of the county or the paymaster of the constabulary force, and all arrears of pay then due to such constable so resigning or withdrawing shall without further proceeding in respect of his offence be forfeited; and upon summary conviction of such offence before any two justices of the peace for the county such constable shall be liable to a penalty not exceeding five pounds.

The section referred to is 2 & 3 Vict. c. 93, s. 13, which requires the constable to obtain the leave of the chief constable or superintendent, or to give one month's notice.

* * * * *

Fees received by constables of a borough to be paid to the superannuation fund.

11. Any fee payable to any constable appointed for any borough, for the performance of any act done in the execution of his duty as such constable, shall be received in such manner as the watch committee, subject to the approbation of the council, may direct, and shall be paid over to the superannuation fund.

* * * * *

Gratuities may be granted as reward for good service to police out of police rates, &c.

24. The court of [*general or*] quarter sessions for any county, and the watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief constable of any county police force, or of the superintendent of the police for the said borough, grant to any constable in the said county or borough, out of the police rate or borough fund, a gratuity in money [*not exceeding three pounds*], in respect of and as a reward for any meritorious act done by the said constable in the execution of his duty.

The words "not exceeding three pounds" are repealed by 53 & 54 Vict. c. 45, s. 36, *post*, p. 504.

* * * * *

Chief constable empowered to suspend constables.

26. The chief constable of any county police force, and the watch committee of any city, borough, district, or place, is and are hereby empowered to suspend any constable within their respective jurisdiction whom he or they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same; and the said chief constable or watch committee is and are hereby also empowered, at his or their discretion, to fine any such constable in a sum of money not exceeding one week's pay, and to reduce the said constable from a superior to an inferior rank, such fine and reduction in rank to be in addition to any other punishment to which the said constable may be liable.

As to the power of the watch committee to suspend or dismiss borough constables, see s. 191 (4) of the Municipal Corporations Act, 1882, *ante*, p. 134.

THE PROMISSORY OATHS ACT, 1868.

(31 & 32 Vict. c. 72.)

An Act to amend the Law relating to Promissory Oaths.

[31st July, 1868.]

1. This Act may be cited for all purposes as the "Promissory Oaths Act, 1868." Short title.

Part I.—Oaths to be Continued.

Oath of Allegiance. Official and Judicial Oaths.

2. The oath in this Act referred to as the oath of allegiance shall be in the form following, that is to say, Form of oath of allegiance.

I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.

* * * * *

4. The oath in this Act referred to as the judicial oath shall be in the form following, that is to say, Form of judicial oath.

I do swear that I will well and truly serve our sovereign lady Queen Victoria in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God.

* * * * *

6. The oath of allegiance and judicial oath shall be taken by each of the officers named in the second part of the said schedule hereto as soon as may be after his acceptance of office, and such oaths shall be tendered and taken in manner in which the oaths required to be taken by such officer previously to the passing of this Act on entering his office would have been tendered and taken. Persons to take the oath of allegiance and judicial oath.

The second part of the schedule enumerates the judicial officers of England, beginning with the Lord Chancellor, and ending with justices of the peace for counties and boroughs.

The manner in which the oaths are to be taken is now regulated by 34 & 35 Vict. c. 48, s, 2, *post*, p. 256. As to the oaths required to be taken by a borough justice, see s. 157 of the Municipal Corporations Act, 1882, *ante*, p. 117.

7. If any officer specified in the schedule hereto declines or neglects, when any oath required to be taken by him under this Act is duly tendered, to take such oath, he shall, if he has already entered Penalty on not taking required oath.

Part I. Section 7.

on his office, vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled, in respect of the same appointment to the same office, to take such oath or make such affirmation more times than one.

* * * * *

Prohibition of oath of allegiance except in accordance with Act.

9. No person shall be required or authorised to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oath substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by this Act and the Clerical Subscription Act, 1865, and the Parliamentary Oaths Act, 1866, or one of such Acts, any Act of Parliament, charter, or custom to the contrary notwithstanding; and no person shall be required or authorised to take the oath of assurance in Scotland.

Miscellaneous Provisions as to Oaths.

Name of Sovereign for the time being to be used in oath.

10. Where in any oath under this Act the name of her present Majesty is expressed, the name of the sovereign of this kingdom for the time being shall be substituted from time to time.

Provision in favour of persons permitted to make affirmations.

11. Where an oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may, instead of taking such oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God."

In consequence of the known scruples of Quakers about taking oaths of any kind, relief was afforded to them by many statutes, beginning as early as the reign of William III. The Act 3 & 4 Will. 4, c. 49, was passed to allow Moravians as well as Quakers to make an affirmation wherever an oath was required, and furnished a form of affirmation in lieu of the oath of abjuration. This privilege was extended to the sect of Separatists by 3 & 4 Will. 4, c. 82 and by 1 & 2 Vict. c. 77 to all persons who had been Quakers or Moravians and who still entertained a conscientious objection to take an oath. Then the Acts 1 & 2 Vict. cc. 5 and 15 extended further relief to these persons by altering the declaration required by 9 Geo. 4, c. 17 (now repealed), to suit their views. Soon after the time when one oath was substituted for the oaths of allegiance, supremacy, and abjuration by 21 & 22 Vict. c. 48, a form of affirmation in lieu of that oath was given by 22 & 23 Vict. c. 10; then 30 & 31 Vict. c. 75 provided a shorter and simpler oath, and enacted that all persons entitled to affirm might change the oath into an affirmation by substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God." The same relief is continued in this Act. See also 32 & 33 Vict. c. 68, s. 4, by which persons are permitted to make a declaration in a court of justice if the presiding judge is satisfied that the taking of an oath would have no binding effect on their conscience.

Jews were at one time unable to take some of the prescribed oaths which contained the words "on the true faith of a Christian." Various statutes were passed from time to time for their relief, but as the oaths in their present form can be taken by Jews as well as Christians, these Acts have become unnecessary and have been repealed by 34 & 35 Vict. c. 48.

Part II.—Oaths to be Abolished.

Part II. Section 12.

Substitution of Declarations for Oaths.

Regulations as to substitution of declarations for oaths.

12. The following regulations shall be enacted with respect to the substitution of declarations for oaths (that is to say):

* * * * *

(2.) Where before the passing of this Act an oath was required to be taken by any person on or as a condition of accepting any office in or under a municipal corporation, or on or as a condition of admission to membership in or participation in the privileges of any municipal corporation, there shall be substituted for such oath, in the case of an office, a declaration that the declarant will faithfully perform the duties of his office; and in the case of admission to membership or participation in the privileges of a municipal corporation, a declaration that the declarant will faithfully demean himself as a member of or participator in the privileges of such corporation:

* * * * *

(4.) Where in any case not otherwise provided for by this Act, or included within the saving clauses thereof, an oath is required to be taken by any person on or as a condition of his accepting any employment or office, a declaration shall be substituted for such oath to the like effect in all respects as such oath:

(5.) The making a declaration in pursuance of this section instead of oath shall in all respects have the same effect as the taking the oath for which such declaration is substituted would have had if this Act had not passed.

Penalty on not making declaration required by this Act.

13. If any person required by this Act to make a declaration instead of an oath declines or neglects to make such declaration, he shall be subject to the same penalties and disabilities, if any, as he would have been subjected to for declining or neglecting to take the oath for which the declaration provided by this Act is substituted.

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SCHEDULE.

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Second Part.

England.

The Lord Chancellor of Great Britain.
The Lord Chief Justice.
The Master of the Rolls.
The Lords Justices of the Court of Appeal in Chancery.
The Vice-Chancellors.
The Puisne Justices of the Queen's Bench.
The Judge of the Admiralty Court.
The Recorder of London.
Justices of the Peace for Counties and Boroughs.

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THE POOR RATE ASSESSMENT AND COLLECTION ACT, 1869.

(32 & 33 VICT. c. 41.)

An Act for amending the Law with respect to the rating of Occupiers for short terms, and the making and collecting of the Poor's Rate.

[26th July, 1869.]

Occupiers of tenements let for short terms may deduct the poor rate paid by them from their rents.

1. The occupier of any rateable hereditament let to him for a term not exceeding three months shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate so paid.

Amount of rate payable by occupier.

2. No such occupier shall be compelled to pay to the overseers at one time or within four weeks a greater amount of the rate than would be due for one quarter of the year.

Owners may agree to pay the rate, and be allowed a commission.

3. In case the rateable value of any hereditament does not exceed twenty pounds, if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent. on the amount thereof.

Any hereditament the rateable value of which does not exceed the specified amount may form the subject of an agreement under this section; but an order under s. 4 is only applicable to hereditaments in which a dwelling-house is included.

The powers and duties of the overseers and of the vestry under this section and s. 4 may be conferred on the council of a borough by an order of the Local Government Board made under ss. 33 and 34 of the Local Government Act, 1894, *post*, p. 558.

The expression "owner" is defined in s. 20, *post*. It is an open question whether an agreement made under this section will cease to operate if the hereditament rises in value above the limit specified. See *Norwood Overseers* v. *Salter*, [1892] 2 Q. B. 118; 61 L. J. M. C. 193; 67 L. T. 376; 56 J. P. 535; 8 T. L. R. 568.

Section 4.

Vestries may order the owner to be rated instead of the occupier.

4. The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order; and thereupon and so long as such order shall be in force the following enactments shall have effect:

(1.) The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate:

(2.) If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated:

(3.) The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect:

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included.

As to the transfer of the powers of the vestry under this section to the council of a borough, see the note to s. 3.

An order made under this section is made applicable to the borough rate by s. 147 of the Municipal Corporations Act, 1882, *ante*, p. 112.

The failure of an owner to give notice in writing to the overseers as required by clause (2) does not affect the franchise. See 42 & 43 Vict. c. 10, s. 2, set out in the note to s. 19, *post*.

The provisions of this Act with respect to the rating of the owners in certain cases instead of the occupiers do not apply to premises the owners of which are rateable under s. 7 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102). That section, which has not been repealed by implication, provides that in the case of a dwelling-house or tenement in a parliamentary borough which is wholly let out in apartments or lodgings which were not separately rated at the date of the passing of the Act, the owner is to be rated, without any limitation as to the rateable value of the premises. *White* v. *Islington Corporation*, [1909] 1 K. B. 133; 78 L. J. K. B. 168; 100 L. T. 22; 53 Sol. J. 97; 73 J. P. 44; 7 L. G. R. 133; 25 T. L. R. 121. This provision is not confined to houses which are let in lodgings in the strict legal sense, but extends to cases where the different parts of a house are let to independent occupiers. *Stamper* v. *Sunderland Overseers*, (1868) L. R. 3 C. P. 388; 37 L. J. M. C. 137; 18 L. T. (N. S.) 682; 16 W. R. 1063; *Griggs v. Stevens*, (1909) 101 L. T. 950; 74 J.P. 67; 8 L. G. R. 63.

Owners omitting to pay rates before the fifth day of June to forfeit commission.

5. When an owner who has become liable to pay the poor rate omits or neglects to pay, before the 5th day of June in any year, any rate or any instalment thereof which has become due previously to the preceding fifth day of January, and had been duly demanded by a demand-note delivered to him or left at his usual or last known place of abode, he shall not be entitled to deduct or receive any commission,

Section 5

abatement, or allowance to which he would, except for such omission or neglect, be entitled under this Act, but shall be liable to pay, and shall pay, such rate or instalment in full.

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Constructive payment of the rate.

7. Every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as herein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which as regards rating depends upon the payment of the poor rate.

This section deals with franchises depending upon the payment of the poor rate. Section 19 contains a similar provision with respect to franchises which depend upon rating. See the note to that section, *post*.

The occupier of a hereditament let to him for a term not exceeding three months is entitled by s. 1 of this Act to deduct from his rent the amount of any rate paid by him in respect of the premises. Other cases in which an occupier who has paid a rate may deduct it from his rent are provided for in ss. 8 and 12.

Where owners omit to pay rates, the occupiers paying the same may deduct the amount from the rent.

8. Where an owner who has undertaken, whether by agreement with the occupier or with the overseers, to pay the poor rates, or has otherwise become liable to pay the same, omits or neglects to pay any such rate, the occupier may pay the same and deduct the amount from the rent due or accruing due to the owner, and the receipt for such rate shall be a valid discharge of the rent to the extent of the rate so paid.

Owners to give lists of occupiers, and liable to penalty for wilful omission.

9. Every owner who agrees with the overseers to pay the poor rate, or who is rated or liable to be rated for any hereditament instead of the occupier, shall deliver to the overseers, from time to time, when required by them, in writing, a list containing the names of the actual occupiers of the hereditaments comprised in such agreement, or for which he is so rated or liable to be rated ; and if any such owner wilfully omits to deliver such list when required to do so, or wilfully omits therefrom or misstates therein the name of any occupier, he shall for every such omission or misstatement be liable, on summary conviction, to a penalty not exceeding two pounds.

Notice to occupiers of rates in arrear.

10. Section twenty-eight of the Representation of the People Act, 1867, with respect to notice to be given of rates in arrear, shall apply to occupiers of premises capable of conferring the parliamentary franchise, although the owners of such premises have become liable for the rates assessed thereon under the provisions of this Act.

See 30 & 31 Vict. c. 102, s. 28, set out in the note to 41 & 42 Vict. c. 26, s. 10, *post*, p. 330.

Liability of owner under agreement.

11. Where the owner has become liable to the payment of the poor rates, the rates due from him, together with the costs and charges of levying and recovering the same, may be levied on the goods of the

owner, and be recovered from him in the same way as poor rates may be recovered from the occupier. Section 11.

Recovery of rates unpaid by the owner.

12. Notwithstanding the owner of any such rateable hereditament as aforesaid has become liable for payment of the poor rates assessed thereon, the goods and chattels of the occupier shall be liable to be distrained and sold for payment of such rates as may accrue during his occupation of the premises, at any time whilst such rates remain unpaid by the owner, subject to the following provisions:

(1.) That no such distress shall be levied unless the rate has been demanded in writing by the overseers from the occupier, and the occupier has failed to pay the same within fourteen days after the service of such demand:

(2.) That no greater sum shall be raised by such distress than shall at the time of making the same be actually due from the occupier for rent of the premises on which the distress is made:

(3.) That any such occupier shall be entitled to deduct the amount of rates for which such distraint is made, and the expense of distraint, from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate and expenses paid.

Owner may appeal against valuation list and rate.

13. Every owner of any hereditament for the rates of which he has become liable shall have the same right of appeal (subject to the same conditions and consequences) against the valuation lists and the poor rates as if he were the occupier thereof.

The overseers to state the period for which poor rate is made.

14. The overseers of every parish when they make a poor rate shall set forth in the title of the rate the period for which the same is estimated, and if the same is payable by instalments the amount of each instalment and the date at which each instalment is payable; provided that if the necessities of the parish shall require it, another rate may be made before such period shall have elapsed. Proviso.

Overseers may make poor rate payable by instalments.

15. The overseers who make the poor rate for a period exceeding three months may declare that the same shall be paid by instalments at such times as they shall specify, and thereupon each instalment only shall be enforceable as and when it falls due, and the payment of any such instalment shall, as respects any qualification or franchise depending upon the payment of the poor rate, be deemed a payment of such rate in respect of the period to which such instalment applies.

Provision for successive occupiers, and for occupiers coming into unoccupied hereditaments.

16. If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, so far as the same shall be known to them; and such occupier shall thenceforth be deemed to have been actually rated from the date so entered by the overseer,* and

* *Sic.*

shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner, and with the like remedy of appeal, as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much and no more of the rate as is proportionate to the time of his occupation within the period for which the rate was made.

The provisions of this section, so far as regards the payment of rates by an outgoing occupier, are extended by 45 & 46 Vict. c. 20, s. 3, to cases in which he is not succeeded in his occupation by an incoming tenant.

When the poor rate shall be deemed to be made.

17. A poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance then on the day of the last allowance.

Evidence of making and publication of rates.

18. The production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *primâ facie* evidence of the due making and publication of such rate.

Overseers to insert names of all occupiers in the rate.

19. The overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be

Penalty for omission.

duly rated for any qualification or franchise as aforesaid; and if any overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on summary

Saving of franchises.

conviction to a penalty not exceeding two pounds; provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted.

This section is not confined in its operation to cases within ss. 3 and 4 of this Act, but is declared to be of general application by 41 & 42 Vict. c. 26, s. 14, *post*, p. 332; *Smith* v. *Seghill*, (1875) L. R. 10 Q. B. 442; 44 L. J. M. C. 114; 32 L. T. 859; 23 W. R. 745; 40 J. P. 228; *Attorney-General* v. *Croydon Corporation*, (1889) 42 Ch. D. 178; 58 L. J. Ch. 527; 37 W. R. 648; 5 T. L. R. 427.

Section 7, *ante*, contains a similar provision with regard to franchises depending upon the payment of rates.

The Assessed Rates Act, 1879 (42 & 43 Vict. c. 10), s. 2, contains the following provision with respect to an allowance or deduction made under this Act: "Where by way of commission or abatement or deduction under the principal Act, or purporting or assumed to be under the principal Act, an allowance or deduction has before the passing of this Act been or shall hereafter be actually made, the same shall for the purpose of every qualification or franchise depending upon rating or upon payment of rates, be deemed to have been duly made in pursuance of every or any agreement, order, notice, or proceeding necessary for the validity thereof under the principal Act, and to have been and to be an allowance or deduction which the overseers were and are empowered to make from the rate under the principal Act; and no qualification or franchise depending upon rating or upon payment of rates shall be defeated

by reason of such allowance or deduction not having been made in pursuance of an agreement in writing, order in writing, or notice in writing, or by reason of the want or insufficiency of any agreement, order, notice, or proceeding necessary for the validity thereof under the principal Act, or by reason of any informality or defect in the making thereof; provided always that this Act shall not relieve any overseers from any liability which they have incurred or may incur by making an allowance or deduction otherwise than in pursuance of the provisions of the principal Act, or affect any remedy for the recovery of the amount of such allowance or deduction." Section 19.

20. The word "overseer" shall include every authority that makes an assessment for the poor rate; the words "poor rate" shall mean the assessment for the relief of the poor, and for the other purposes chargeable thereon according to law, and in the metropolis shall extend to every rate made by the overseers, and chargeable upon the same property as the poor rate; the word "owner" shall mean any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent; the word "parish" shall signify every place for which a separate overseer can be appointed; the word "vestry" shall include not only the vestry of a parish existing under the authority of some general or special Act of Parliament, or by special custom or otherwise, but also the meeting of the inhabitants of any township, vill, or place having a separate overseer, and for which a separate poor rate is made, held after notice given in like manner as is required by law in regard to the meetings of vestries; and the word "metropolis" shall include only the metropolis as defined by the Metropolis Management Act, 1855. Interpretation of terms.

As to the meaning of the expression "owner" where the premises are sub-let, see *Truman, Hanbury & Co.* v. *Kerslake*, [1894] 2 Q. B. 774; 63 L. J. M. C. 222; 43 W. R. 111; 58 J. P. 766; 10 T. L. R. 668, decided under s. 141 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

The Representation of the People Act, 1867 (see the note to s. 4, *ante*), contains no definition of the term "owner," and an agent who is employed to collect the rents of the tenements mentioned in s. 7 of that Act is not liable to be rated as owner under that section. *Nokes* v. *Strong*, [1909] 2 K. B. 625; 78 L. J. K. B. 1041; 101 L. T. 318; 73 J. P. 417; 7 L. G. R. 876.

21. This Act shall not extend to Scotland or to Ireland. Application of Act.

22. This Act may be cited as "The Poor Rate Assessment and Collection Act, 1869." Short title.

THE PROMISSORY OATHS ACT, 1871.

(34 & 35 VICT. C. 48.)

An Act to repeal divers enactments relating to Oaths and Declarations which are not in force; and for other purposes connected therewith.

[13th July, 1871.]

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Persons before whom oaths to be taken.

2. Whereas by the Promissory Oaths Act, 1868, it is provided that the oaths of allegiance and judicial oath should be taken by each of certain officers therein mentioned, in manner in which the oaths required to be taken by such officer previously to the passing of that Act would have been taken; and it is desirable, with a view to the revision of the statute law, to define the manner in which such oaths are to be taken: Be it enacted that each such officer shall take the said oaths before such persons as Her Majesty may from time to time appoint; or

In England, before the Lord High Chancellor of Great Britain, or in the Court of Chancery, Queen's Bench, Common Pleas, or Exchequer, in open court before one or more of the judges of such court, or in open court at the general or quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice:

* * * * *

See s. 6 of the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), *ante*, p. 247.

A circular was issued on November 25th, 1882, from the Home Office to every town clerk stating that in pursuance of this Act Her Majesty had been pleased to appoint that the oath of allegiance and judicial oath might be taken by the mayor of any borough before any two justices of the peace of such borough, or if there were not two such justices, then before any two councillors of such borough, and also that such oaths might be taken by any justice of the peace for any borough before the mayor of such borough.

As to the manner in which oaths may be administered, see the Oaths Act, 1909, *post*, p. 669.

Short title.

3. This Act may be cited as "The Promissory Oaths Act, 1871."

THE BALLOT ACT, 1872.

(35 & 36 Vict. c. 33.)

An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections. [18th July, 1872.]

Whereas it is expedient to amend the law relating to procedure at parliamentary and municipal elections:

Be it enacted as follows:

Part I.—Parliamentary Elections.

Procedure at Elections.

The provisions relating to the poll at a parliamentary election were formerly made applicable to municipal elections by s. 20 of this Act. That section has been repealed by s. 5 of the Municipal Corporations Act, 1882, and is now replaced by s. 58 of that Act, *ante*, p. 60, which makes these provisions applicable to a contested election of town councillors, subject to the modifications contained in Schedule 3, Part III., and to the other provisions of that Act. These provisions are also made applicable to elections of elective auditors by s. 62 of the Act of 1882, but they do not apply to the elections of the mayor and aldermen, which are regulated by ss. 60 and 61 of that Act.

Such of the provisions of the Ballot Act as have not been made applicable to municipal elections are for the most part omitted.

By s. 53 of the Municipal Corporations Act, 1882, *ante*, p. 58, the returning officer at an election of councillors for a whole borough is the mayor; at an election for a ward an alderman assigned for that purpose by the council is the returning officer.

This Act applies to county council elections to the same extent as it applies to municipal elections, subject to certain modifications which are pointed out in the notes. As to the returning officer at a county council election, see the note to s. 53 of the Municipal Corporations Act, 1882, *ante*.

1. * * * * *

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

Part I. Section 1.

The first part of this section, which relates to the nomination of candidates, applies only to parliamentary elections; but the last paragraph, which is set out above, has been held to be incorporated by s. 58 of the Municipal Corporations Act, 1882, and is therefore applicable to elections of town councillors and elective auditors. *Reg.* (or *Westacott*) v. *Stewart*, [1898] 1 Q. B. 552; 67 L. J. Q. B. 421; 78 L. T. 256; 62 J. P. 229; 14 T. L. R. 261. In that case, where one of the candidates at a county council election had died between the day of nomination and the election, the Court ordered the returning officer to countermand the poll, and afterwards granted a *mandamus* for the election to be held on a day appointed by the Court under s. 70 of the Municipal Corporations Act, 1882, *ante*, p. 66.

Poll at elections.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back (*a*).

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted (*b*).

After the close of the poll the ballot boxes shall be sealed up so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return (*c*).

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer (*d*).

(*a*) The object of the requirement that the ballot paper must be marked on both sides with the official mark is to enable the presiding officer to see by looking at the back of it only whether it is a ballot paper which has been given out by him to a voter. The requirements of the section are complied with if the official mark is recognisable on the back, even though it is imperfectly impressed or is indicated only by the ink running through the paper from the mark made on the front. *Cirencester*, (1893) 4 O'M. & H. 194; 9 T. L. R. 255.

In *Pickering* v. *James*, *post*, p. 263, the judges of the Court of Common Pleas were equally divided on the question whether it is the duty of the presiding officer to examine each ballot paper when it is shown to him by the voter as directed by this section in order to see that it is marked with the official mark before it is placed in the box. In the later case of *Ackers* v. *Howard*, *infra*, the Court expressed the opinion that it is the duty of the presiding officer to make this examination in order that, if an unstamped ballot paper has inadvertently been issued, the mistake may be rectified by cancelling the unstamped paper and giving the voter another duly stamped paper in its place.

The requirements of this section are imperative and must be fulfilled exactly; but the directions for the guidance of voters contained in Schedule 2, *post*, which prescribe the mode in which they are to vote, are merely directory, and a substantial compliance with such directions is sufficient. Thus any mark which shows that the voter intended to vote, and which shows for which of the candidates he intended to vote, is sufficient, although it is not made in the form of a cross or placed on that part of the ballot paper where the directions require it to be placed, provided that there is nothing in the mark used by which the voter can be identified. *Woodward* v. *Sarsons*, *infra*. See also *Phillips* v. *Goff*, (1886) 17 Q. B. D. 805; 55 L. J. Q. B. 512; 35 W. R. 197; 50 J. P. 614; 2 T. L. R. 900; *Morris* v. *Beves*, [1897] 1 Q. B. 449; 66 L. J. Q. B. 299; 76 L. T. 120; 45 W. R. 430; 61 J. P. 263; *Pontardawe Rural Council Election Petition, Hodgson v. Evans*, [1907] 2 K. B. 313; 76 L. J. K. B. 702; 71 J. P. 371; 5 L. G. R. 1060; 23 T. L. R. 538; *Cooper* v. *Ogden*, (1908) 72 J. P. 115; 6 L. G. R. 373; 24 T. L. R. 242. In the *Cirencester* case, *ante*, p. 258, Hawkins, J., said: "We have looked at the face of the paper itself with a view to see whether or not the voter has by any mark clearly indicated the person for whom he wished and intended to vote; and if we have found such a mark we have upheld the vote, regardless of the very technical and as we think unsubstantial objections which have been allowed in some of the earlier cases to be found in the reports of election cases, our view being that we ought to interpret the Ballot Act liberally, and, subject to other objections, to give effect to any mark on the face of the paper which in our opinion clearly indicated the intention of the voter, whether such mark were in the shape of a cross or a straight line or in any other form, and whether made with pen and ink, pencil, or even an indentation made on the paper, and whether on the right or the left hand of the candidate's name or elsewhere within his compartment on the voting paper. Of course every deviation from the course pointed out in the rules tends to create difficulties which may be avoided by a rigid observance of it. It is highly prudent, therefore, to adhere to it, though we do not think it essential."

(*b*) The returning officer is required by Schedule 1, rule 36, *post*, to indorse "rejected" on every ballot paper which he may reject as invalid under this section. A ballot paper is declared by the section to be void if it has not on its back the official mark; but the absence of this mark from the face of the ballot paper does not render it invalid. *Ackers* v. *Howard*, (1886) 16 Q. B. D. 739; 55 L. J. Q. B. 273; 54 L. T. 651; 34 W. R. 609; 50 J. P. 519; 2 T. L. R. 484.

Where the voter's number on the burgess roll was marked by the presiding officer on the face of the ballot paper instead of on the counterfoil, it was held that the ballot paper was void because the voter could be identified by referring to the burgess roll. *Woodward* v. *Sarsons*, (1875) L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. 867; 39 J. P. 776. See also *Deans* v. *Stevenson*, *post*, p. 264.

A ballot paper is not rendered invalid by the fact that it bears a mark which is such as might possibly lead to the identification of the voter. In order to avoid a ballot paper on this ground, the mark must be one by which the voter can in fact be identified. *Cirencester*, *ante*, p. 258.

(*c*) It is the duty of the returning officer, as soon as the counting of the votes is finished, to declare the candidate elected who has received the majority of votes. He has no jurisdiction to inquire into the qualification of a candidate, which can only be questioned by an election petition under s. 87 of the Municipal Corporations Act, 1882. The only judicial function of the returning officer is to determine whether any of the voting papers are invalid on one or other of the grounds mentioned in this section; and any such question must be determined before the counting of the votes is completed. *Pritchard* v. *Mayor of Bangor*, (1888) 13 A. C. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564.

Part I. Section 2.

The agents of the candidates referred to in this section are appointed under Schedule 1, r. 31, *post*.

At a county council election the returning officer is entitled to use any of the rooms mentioned in s. 6, *post*, free of charge for the purpose of counting the votes. Local Government Act, 1888, s. 75 (16) (*g*). No such right is given to the returning officer at a municipal election.

(*d*) The provisions of this section with respect to the return to be made to the Clerk of the Crown in Chancery and the right of the returning officer to vote do not apply to municipal elections. See Schedule 3, Part III., to the Municipal Corporations Act, 1882, *ante*, p. 178. As to the right of the returning officer to vote at such elections, see s. 58 (5) of the Act of 1882, *ante*, p. 61.

Offences at Elections.

Offences in respect of nomination papers, ballot papers, and ballot boxes.

3. Every person who,—

(1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or

(2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

(3.) Without due authority supplies any ballot paper to any person; or

(4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(5.) Fraudulently takes out of the polling station any ballot paper; or

(6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Clause (1) does not apply to municipal elections, but a similar provision is contained in s. 74 of the Municipal Corporations Act, 1882, *ante*, p. 68.

As to interference with ballot papers, see *R.* v. *Chapin*, (1909) 74 J. P. 71.

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk,

or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

The agents referred to in this section are commonly called polling agents. They are appointed under 6 & 7 Vict. c. 18, s. 85, *ante*, p. 233, for the purpose of detecting personation. See Schedule 1, r. 57, *post*. As to the appointment of agents by the candidates at a municipal election, see the note to s. 58 (6) of the Municipal Corporations Act, 1882, *ante*, p. 61.

Where a polling agent took from the polling station a copy of the burgess list on which the names of voters who had obtained ballot papers were marked off, and left it before the close of the poll at the committee-room of the candidate by whom he was employed, it was held that he was not liable to be convicted under this section because there was no evidence that the information had actually been communicated to anyone, although he had given other persons the means of acquiring it. *Stannanought* v. *Hazeldine*, (1879) 4 C. P. D. 191; 48 L. J. M. C. 89; 40 L. T. 589; 27 W. R. 620; 43 J. P. 352.

As to the declaration of secrecy which is required to be made by every officer, clerk, or agent attending at a polling station, see Schedule 1, r. 54, *post*.

Amendment of Law.

* * * * *

Use of school and public room for poll.

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

Part I. Section 6.

Sections 6 and 7 do not apply to municipal elections. See the Municipal Corporations Act, 1882, Schedule 3, Part III., r. 1, and the note thereto, *ante*, p. 178.

Section 6 is made applicable to county council elections by s. 75 (16) (*g*) of the Local Government Act, 1888, which authorises the returning officer at such elections to use the rooms mentioned free of charge not only for taking the poll but for hearing objections to nomination papers and for counting the votes. The returning officer at a municipal election is not entitled to use such rooms for any of these purposes.

Conclusiveness of register of voters.

7. At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote: Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting.

See the note to s. 6.

At an election of councillors a person is entitled to vote under s. 51 of the Municipal Corporations Act, 1882, *ante*, p. 58, if he is enrolled in the burgess roll, and not otherwise.

Duties of Returning and Election Officers.

General powers and duties of returning officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

* * * * *

For an election of councillors the town clerk is to provide nomination papers, and the mayor is to provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll. Municipal Corporations Act, 1882, Schedule 3, Part II., r. 6, and Part III., r. 3, *ante*, pp. 175, 178.

Keeping of order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

As to the right of a candidate to be present in a polling station, see *Clementson* v. *Mason*, *post*, p. 273.

Part I. Section 10.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Powers of presiding officer and administration of oaths, &c.

Where the proceedings at an election are interrupted or obstructed by riot or open violence, the returning officer or his deputy is required to adjourn the poll at the polling place where the disturbance occurs until the following day. 5 & 6 Will. 4, c. 36, s. 8.

As to the questions which may be put to voters, and the oath which may be administered, see the note to Schedule 1, r. 27, *post*.

As to the declaration of secrecy which is required to be made by persons attending at a polling station or at the counting of the votes, see Schedule 1, r. 54, *post*, p. 274.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

Liability of officers for misconduct.

Section fifty of the Representation of the People Act, 1867, (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate,) shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

30 & 31 Vict. c. 102.

A presiding officer is liable to an action at the suit of a person aggrieved by the breach of the ministerial duties imposed on him by the Act, such as the duty of delivering to the voters ballot papers bearing the official mark, without any allegation of malice or wilfulness. He is not, however, liable for the acts of a clerk to whom he has delegated any of his duties under Schedule 1, r. 50, *post*, because such clerk is not appointed by him and the relation of master and servant does not subsist between them. *Pickering* v. *James*, (1873) L. R. 8 C. P. 489; 42 L. J. C. P. 217; 29 L. T. 210; 21 W. R. 786; 37 J. P. 679.

As to the liability of a returning officer to be made a respondent to an election petition where misconduct is alleged against him, and to pay costs where an election has been invalidated through his negligence, see note (*b*) to s. 88 of the Municipal Corporations Act, 1882, *ante*, p. 75.

By s. 50 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), any returning officer or his deputy, or any partner or clerk of either of them, who acts as agent for any candidate in the management or conduct of his election, is guilty of a misdemeanor.

* * * * *

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

Non-compliance with rules.

In order to render an election invalid, the non-compliance with the rules or the mistake in the use of the forms must be so great as to amount to a conducting of

Part I. Section 13.

the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the result of the election. *Woodward* v. *Sarsons*, *ante*, p. 259. The burden of proving that the result was not affected is on the respondents. *Medhurst* v. *Lough*, (1901) 17 T. L. R. 210.

Where the name of a candidate who had been nominated by two nomination papers containing different descriptions appeared twice in the ballot paper as if the entries referred to two candidates, it was held that this was a mistake in the form of the ballot paper which was cured by this section, as no voter was misled by it. *Northcote* v. *Pulsford*, (1875) L. R. 10 C. P. 476; 44 L. J. C. P. 217; 32 L. T. 602; 23 W. R. 700; 39 J. P. 487.

Where the number of a nominator on the burgess roll was wrongly stated in a nomination paper, it was held that the nomination was invalid, and that the mistake was not cured by this section. *Gothard* v. *Clarke*, (1880) 5 C. P. D. 253; 49 L. J. C. P. 474; 42 L. T. 776; 29 W. R. 102; 44 J. P. 587. But see *Marton* v. *Gorrill*, *ante*, p. 67, decided under the similar provision contained in s. 72 of the Municipal Corporations Act, 1882.

An election was held not to be invalidated by the fact that the presiding officer had marked on about one-third of the ballot papers the number of the voter on the register, where the result of the election was not affected by this irregularity. *Deans* v. *Stevenson*, (1882) 9 Court of Session Cas. (4th series) 1077.

Where by the mistake of a clerk appointed by a returning officer a ballot paper contained the name of a candidate who had withdrawn, and a number of votes were given for that candidate which might have affected the result, it was held that the election was invalid and that the mistake was not cured by this section. *Wilson* v. *Ingham*, (1895) 64 L. J. Q. B. 775; 72 L. T. 796; 43 W. R. 621; 59 J. P. 614; 11 T. L. R. 452.

See also the cases cited in the notes to s. 2, *ante*, p. 258, and to s. 241 of the Municipal Corporations Act, 1882, *ante*, p. 159.

Use of municipal ballot boxes, &c., for parliamentary election, and *vice versâ*.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

Construction of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject-matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the

term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

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Part III.

Personation.

Definition and punishment of personation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

[*The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years together with hard labour.*] It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, [*and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.*]

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

[*The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act,* 1868.

If, on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in Parliament for such county or borough during the Parliament then in existence.]

The provision as to the costs of a prosecution for personation has been repealed by s. 10 of the Costs in Criminal Cases Act, 1908, *post*, p. 659. See the note to s. 169 of the Municipal Corporations Act, 1882, *ante*. The other parts of this section which are printed in italics have been repealed by 46 & 47 Vict. c. 51, s. 66. The offence of personation, as defined by this section, at a municipal election, is punishable as a

Part III. Section 24.

corrupt practice under s. 2 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), *post*, p. 377.

The offence of personation is not committed unless the act is done corruptly. Thus where a voter who was registered in two divisions of a parliamentary borough voted in both of them in the honest belief that he was entitled to do so, it was held that he had not committed the offence of personation. *Isaacson* v. *Durant*, (1886) 54 L. T. 684; 4 O'M. & H. 34. See also *Gloucester*, (1873) 2 O'M. & H. 59; *Athlone*, (1880) 3 O'M. & H. 57.

A person who applies for a ballot paper in the name in which he is registered and which is intended to refer to him is not guilty of personation although the name on the register is not in fact his name. *Reg.* v. *Fox*, (1887) 16 Cox C. C. 166.

In a prosecution under this section it is not necessary to prove the appointment of the presiding officer. *Reg.* v. *Garvey*, (1887) 16 Cox C. C. 252. As to enforcing by *mandamus* the duty of the returning officer to prosecute, see *Reg.* v. *Mayor of Preston*, (1882) 46 J. P. 324.

The provisions of the Registration Acts referred to in this section are those contained in 6 & 7 Vict. c. 18, ss. 85—89, *ante*, p. 233. These provisions are made applicable to municipal elections by s. 86 of the Municipal Corporations Act, 1882, *ante*, p. 72.

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PART IV.

Miscellaneous.

Effect of schedules.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

Definitions.

29. In this Act—

"Municipal borough:"

The expression "municipal borough" means any place for the time being subject to the Municipal Corporation Acts, or any of them:

"Municipal Corporation Acts:"

The expression "Municipal Corporation Acts" means—

(a) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same:

* * * * *

"Municipal election."

The expression "municipal election" means—

(a) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough;

* * * * *

The reference to 5 & 6 Will. 4, c. 76, is to be read as referring to the Municipal Corporations Act, 1882. See s. 242 of the latter Act, *ante*, p. 160.

* * * * *

Saving.

31. Nothing in this Act, except Part III. thereof, shall apply to any election for a university or combination of universities.

32. The Acts specified in the fourth, fifth, and sixth schedules to this Act, to the extent specified in the third column of those schedules, and all other enactments inconsistent with this Act, are hereby repealed. . . .

These schedules contain a large number of enactments which were to be revived on the expiration of this Act; but as the Act is continued in force (see the note to s. 33, *infra*) these schedules have been omitted.

Short title.

33. This Act may be cited as The Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine; and on the said day the Acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.

The Ballot Act has been continued in force from year to year, and is now in force by virtue of the Expiring Laws Continuance Act, 1909 (9 Edw. 7, c. 46).

SCHEDULES.

[See s. 28.]

FIRST SCHEDULE.

Part I.

Rules for Parliamentary Elections.

[As to the application of these rules to municipal elections, see the note to Part I. of this Act, *ante*, p. 257.]

Election.

Rules 1—14, which relate to the fixing of the time and place of election and the nomination of candidates, do not apply to municipal elections, which are regulated by ss. 50—58 and Schedule 3, Parts II. and III., of the Municipal Corporations Act, 1882, *ante*, pp. 57, 174. The days on which elections are to be held to fill ordinary vacancies in the office of councillor or elective auditor are fixed by ss. 52 and 62 of the Act of 1882. Elections to fill casual vacancies are to be held on a day fixed by the mayor under s. 66 of that Act.

The Poll.

* * * * *

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient. . . .

The duties of the returning officer under this rule devolve upon the mayor at a municipal election. See the note to s. 8, *ante*.

The borough council have power to divide the borough or any ward into polling districts under s. 64 of the Municipal Corporations Act, 1882, *ante*, p. 65.

A polling place is the place in the borough or the polling district at which the votes are to be taken. See 30 & 31 Vict. c. 102, s. 34; 46 & 47 Vict. c. 51, s. 47. Public notice is required by Schedule 3, Part III., r. 2, of the Municipal Corporations Act, 1882, *ante*, p. 178, to be given of the situation, division, and allotment of polling places, and of the description of the persons entitled to vote thereat and at the several polling stations.

As to the person who is to act as returning officer at a county council election, see the note to s. 53 of the Municipal Corporations Act, 1882, *ante*.

Schedule 1, Part I.

16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.

This rule does not apply to municipal elections. See the Municipal Corporations Act, 1882, Schedule 3, Part III., r. 1, *ante*, p. 178.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

Notice of the description of the persons entitled to vote at the several polling stations is to be given by the mayor under r. 2 of the Third Schedule, Part III., to the Municipal Corporations Act, 1882, *ante*, p. 178.

19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.

This rule does not apply to municipal elections. See the Municipal Corporations Act, 1882, Schedule 3, Part III., r. 1, *ante*, p. 178.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

The duties of the returning officer under this rule devolve upon the mayor at a municipal election under r. 3 of the Third Schedule, Part III., to the Municipal Corporations Act, 1882, *ante*, p. 178.

The register of voters at such an election is the burgess roll, or, in the case of an election for a ward of a borough, the ward list. Rule 64, *post*.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

At a municipal election the presiding officers are appointed by the mayor under Schedule 3, Part III., r. 3 of the Municipal Corporations Act, 1882, *ante*, p. 178.

The returning officer may, if he thinks fit, preside at any polling station himself under r. 47, *post*.

As to the right of a candidate to be present in the polling station, see the note to r. 51, *post*: and as to the appointment of agents by the candidates, see s. 58 (6) of the Municipal Corporations Act, 1882, *ante*, p. 61.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

A ballot paper which is not marked with the official mark on the back is void under s. 2 of this Act. See the notes to that section, and see r. 36, *post.*

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed in this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as herein-after mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form herein-after mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

As to the list of votes marked by the presiding officer, see r. 29 (5). For the form of declaration of inability to read, see Schedule 2, *post.*

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

The questions which may be put to voters are set out in s. 59 of the Municipal Corporations Act, 1882, *ante*, p. 61. Although that section does not authorise the administering of any oath, it may be that the effect of s. 58 of the Municipal Corporations Act, 1882, and of this rule is that the returning officer must, if required on behalf of any candidate at the time when a voter tenders his vote, administer to him the oath which is prescribed by 6 & 7 Vict. c. 18, s. 81, and which, as adapted to municipal elections, is in the following form:

'You do swear [*or* "affirm," *as the case may be*] that you are the same person whose name appears as A.B. on the burgess roll now in force for the borough of and that you have not before voted either here or elsewhere at the present election for the borough of . So help you God."

28. A voter who has inadvertently dealt with this * ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

* *Sic.*

Schedule 1, Part I.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1.) Each ballot box in use at his station, unopened but with the key attached; and
(2.) The unused and spoilt ballot papers, placed together; and
(3.) The tendered ballot papers; and
(4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and
(5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer.

In a municipal election the register of voters is the burgess roll or the ward list. Rule 64, *post*.

Although the marked copies of the register of voters and the counterfoils of the ballot papers are included under the same number in this rule, they ought not to be placed together, but the marked copies of the register should be placed in a sealed packet by themselves. *Stowe* v. *Jolliffe*, (1874) L. R. 9 C. P. 446; 43 L. J. C. P. 173; 30 L. T. 299; 22 W. R. 946; 38 J. P. 617. The making up of the various documents into separate packets is of importance in relation to the right of inspection under rules 40—42, *post*.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

As to the appointment of agents at a municipal election, see the note to s. 58 (6) of the Municipal Corporations Act, 1882, *ante*, p. 61.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

The non-attendance of any agent will not invalidate the counting. Rule 55, *post*.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

A candidate is entitled to be present at the counting of the votes, even if he has appointed an agent. *Clementson* v. *Mason*, *post*, p. 273.

Assistants may be appointed by the returning officer under r. 48.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning

officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

As to the votes which are not to be counted, see s. 2, *ante*, and the notes thereto.

In a municipal election no return is to be made to the Clerk of the Crown in Chancery. Municipal Corporations Act, 1882, Schedule 3, Part III., r. 6, *ante*, p. 179.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

See the note to r. 36.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

In a municipal election the documents mentioned are to be delivered to the town clerk. Rule 64 (b), *post*. In the case of a county council election they are to be delivered to the clerk of the county council. Local Government Act, 1888, s. 75 (5).

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts, shall cause them to be destroyed.

In a municipal election the documents are to be retained and destroyed by the town clerk, subject to the directions of the council of the borough, unless otherwise directed by an order of the County Court. Rule 64 (b), *post*. In the case of a county council election, the clerk of the county council is to be substituted for the town clerk. See the note to r. 38.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to be granted by such Court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose

Schedule 1, Part I.

of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or Court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a Court by this rule may be exercised by any judge of such Court at chambers.

This rule applies only to the inspection of ballot papers which have been rejected under r. 36. The inspection of the counted ballot papers and of other documents is regulated by the two following rules.

In the case of a municipal election the ballot papers are in the custody of the town clerk, and an order for inspection may be made either by the County Court having jurisdiction in the borough, or by an Election Court at the trial of an election petition. Rule 64 (b), *post*.

Where an election petition had been presented, the Court made an order for the inspection of the marked copy of the register of voters on an affidavit by the petitioner's agent that inspection of it was required for the purposes of the petition, but refused to allow inspection of the rejected ballot papers or the counterfoils. *Stowe* v. *Jolliffe*, *ante*, p. 270.

A prosecution having been instituted against a deputy returning officer for fraudulently placing in the ballot box papers which he knew were not ballot papers, a County Court judge made an order under r. 64 (b) directing the town clerk to produce, for the purpose of the prosecution, the rejected ballot papers, the counterfoils, the counted ballot papers, and the spoilt ballot papers, and to open the sealed packets, taking precautions that the mode in which any particular elector had voted should not be discovered. It was held that this order was valid, and that the documents produced under it were admissible in evidence on the trial of the indictment. *Reg.* v. *Beardsall*, (1876) 1 Q. B. D. 452; 45 L. J. M. C. 157; 34 L. T. 660; 40 J. P. 583.

Leave to inspect the rejected ballot papers, but not to see the numbers on the backs of them, was granted in *Macartney* v. *Corry*, (1873) 7 Ir. R. C. L. 190; but where no petition had been presented, and the applicant did not state that he intended to present a petition, an order for the inspection of the rejected ballot papers was refused. *Darwen*, (1885) 2 T. L. R. 220.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent Court to be invalid.

In the case of a municipal election the documents referred to in this rule are in the custody of the town clerk, and an order to inspect them may be made either by the County Court or by an Election Court under r. 64 (b), *post*. As to such orders, see the cases cited in the note to r. 40.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

See the note to r. 41. In the case of a municipal election the regulations for the inspection of documents are prescribed by the council of the borough with the consent of a Secretary of State under r. 64 (b). An order for inspection of the marked register will be made whether a scrutiny is claimed or not. *James* v. *Henderson*, (1874) 43 L. J. C. P. 238; 30 L. T. 527; 38 J. P. 663.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as

may be directed by such order, or by a rule of the Court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

* * * * *

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

See *Pritchard* v. *Mayor of Bangor*, *ante*, p. 259.

46. Where the returning officer is required or authorised by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No persons * shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

* *Sic.*

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

As to the power of the presiding officer to order the arrest of a person who is charged with personation, see 6 & 7 Vict. c 18, s. 86, *ante*, p. 234; and as to his power to order the exclusion or ejection from the polling station of any person who misconducts himself in a polling station, see s. 9 of this Act, *ante*, p. 262.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

A candidate is entitled by this rule to be present in any of the polling stations and at the place where the votes are counted, whether he has appointed an agent or not, and he cannot be required to give any reason for his desire to be present. Rules 21 and 33 are to be read as if the candidates were included among the excepted persons who are entitled to be present under those rules. *Clementson* v. *Mason*, (1875) L. R. 10 C. P. 209; 44 L. J. C. P. 171; 32 L. T. 325; 23 W. R. 620; 39 J. P. 360.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

The agents referred to in this rule are appointed under r. 31.

Schedule 1, Part I.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

A form of statutory declaration of secrecy is contained in Schedule 2, *post*. The infringement of secrecy is an offence punishable under s. 4, *ante*.

A candidate who exercises his right of attending at a polling station cannot be required to make a statutory declaration under this rule. See *Clementson* v. *Mason*, *ante*, p. 273.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

See for example r. 32, *ante*.

56. In reckoning time for the purposes of this Act, Sunday, Christmas day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

57. In this Act—

* * * * *

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

The section here referred to is incorporated by s. 24 of this Act, and is set out *ante*, p. 233.

As to the appointment of polling agents at a municipal election, see the notes to s. 58 (6) of the Municipal Corporations Act, 1882, *ante*, p. 61.

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PART II.

RULES FOR MUNICIPAL ELECTIONS.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

(a) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(b) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

(a) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(b) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(c) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

As to the burgess roll and the ward list, see s. 45 of the Municipal Corporations Act, 1882, *ante*, p. 55.

The documents which are to be delivered to the town clerk under this rule are those which are mentioned in r. 38. The provisions as to inspection, &c., of such documents are contained in rr. 39—43.

An order for inspection may be made under this rule either by the County Court or by an Election Court on the trial of an election petition under ss. 92 and 93 of the Municipal Corporations Act, 1882. For an instance of such an order made by the County Court, see *Reg.* v. *Beardsall*, *ante*, p. 272.

Further modifications are made by Part III. of the Third Schedule to the Municipal Corporations Act, 1882, *ante*, p. 178.

The documents referred to in this rule are to be delivered in the case of a county council election to the clerk of the council. Local Government Act, 1888, s. 75 (5).

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SECOND SCHEDULE.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

An election is not to be declared invalid by reason of any mistake in the use of the forms in this schedule if the election was conducted in accordance with the principles laid down in the body of the Act and the mistake did not affect the result of the election. Section 13, *ante*.

The first six forms in this schedule are omitted. The 1st, 2nd, 3rd, and 4th refer to the writ for election, a document which does not exist in the case of municipal elections; the 5th is the form of notice and the 6th the form of nomination paper at parliamentary elections. The corresponding forms for municipal elections will be found in 45 & 46 Vict. c. 50, Eighth Schedule, Part II., Forms H and I, *ante*, pp. 185, 186.

As to the application of these forms to county council elections, see the note to s. 240 of the Municipal Corporations Act, 1882, *ante*.

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Schedule 2.

Form of Ballot Paper.

Form of Front of Ballot Paper.

Counterfoil No.		
1	BROWN (John Brown, of 52, George St., Bristol, merchant.)	
2	JONES (William David Jones, of High Elms, Wilts, Esq.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	

Note.—The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

Form of Back of Ballot Paper.

No.

Election for county [*or* borough, *or* ward].

18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

This form of ballot paper is to be used at municipal elections for elections of councillors only. A similar form for use at elections of auditors is prescribed by the Municipal Corporations Act, 1882, s. 62 (3), and Schedule 8, Form K, *ante*, p. 187.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

The voter may vote for candidate

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a

misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour. Schedule 2.

Note.—These directions shall be illustrated by examples of the ballot paper.

These directions are not imperative, and a substantial compliance with them is sufficient. See the note to s. 2, *ante*.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare, That I will not at this election for do anything forbidden by section four of The Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

See r. 54, *ante*. The question whether a person can be convicted of an offence under s. 4, *ante*, if the person taking the declaration has not read that section to him as he is here required to do, was raised but not decided in *Stannanought* v. *Hazeldine*, *ante*, p. 261. The Act does not appear to make compliance with this direction a condition precedent to a conviction under that section.

Form of Declaration of inability to read.

I, *A.B.*, of , being numbered on the Register of Voters for the county [*or* borough] of , do hereby declare that I am unable to read.

A.B., his mark.

day of .

I, the undersigned, being the presiding officer for the polling station for the county [*or* borough] of , do hereby certify, that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
Presiding officer for polling station for the county [*or* borough] of .

day of .

THIRD SCHEDULE.

Provisions of Registration Acts referred to in Part III. of the foregoing Act.

(See s. 24, *ante*.)

Session and Chapter.	Title.	Part applied.
As To England.		
6 & 7 Vict. c. 18 . .	An Act to amend the law for the registration of persons entitled to vote, and to define certain rights of voting, and to regulate certain proceedings in the elections of members to serve in Parliament for England and Wales.	Sections eighty-five to eighty-nine, both inclusive.

* * * * *

THE BOROUGH AND LOCAL COURTS OF RECORD ACT, 1872.

(35 & 36 VICT. c. 86.)

An Act to amend the law relating to Borough and other Local Courts of Record. [10th August, 1872.]

WHEREAS it is expedient to amend the law relating to Borough and other Local Courts of Record in England or Wales: Be it therefore enacted as follows:

This Act is not in any way affected by the Municipal Corporations Act, 1882. See s. 184 (2) of that Act, *ante*, p. 131.

Short title.

1. This Act may be cited as "The Borough and Local Courts of Record Act, 1872."

Her Majesty may direct Interpleader Act to extend to any Local Court of Record.

2. It shall be lawful for Her Majesty from time to time by an Order in Council to direct that all or any part of the provisions of an Act passed in the first and second years of His late Majesty King William the Fourth, intituled "An Act to enable courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims," and of the provisions set forth in the schedule to this Act, shall apply to all or any local Court or Courts of Record in England or Wales; and within one month after such order shall have been made and published in the London Gazette, such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled; and in and by such order Her Majesty may alter and modify such provisions as are mentioned in the schedule, so as to adapt the same to the constitution, jurisdiction, and procedure of any such court or courts, and may direct by whom and at what time or times any powers and duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied.

The Interpleader Act, 1 & 2 Will. 4, c. 58, as amended by 23 & 24 Vict. c. 126, ss. 12—18, is now replaced, so far as regards the High Court, by Order 57 of the Rules of the Supreme Court.

Orders in Council applying the provisions set forth in the schedule to this Act to various local courts of record are contained in the London Gazette of June 27th, 1873.

Her Majesty may direct that writ, &c., may be served as specified.

3. It shall also be lawful for Her Majesty from time to time by such order as aforesaid to direct that any writ, order, summons, or process issuing out of or made or taken in any such Court of Record

Section 3.

may be served in such part or parts of England and Wales as shall be specified in such order.

Two or more courts may be held at the same time.

4. Two or more courts may be held at the same time either for the trial of issues or for the ordinary proceedings of the court.

Affidavits made before any commissioner, &c.

5. Affidavits made before any commissioner or other person appointed or authorised to take affidavits, either in England or elsewhere, by the Lord High Chancellor, or by any of the superior courts or by the judges thereof, may be used in the court, and the signature of any person purporting to be such commissioner, or to be a person so appointed or authorised as aforesaid, need not be verified.

Power to send writs of execution to bailiffs of county court.

6. In all cases where final judgment shall have been obtained in any action brought in the court wherein the debt or damage does not exceed twenty pounds, exclusive of costs, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money, or any costs, charges, or expenses not exceeding the sum of twenty pounds, such court shall be at liberty to send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels; and the registrar of such county court shall stamp or seal the same, and thereupon the high bailiff of such county court shall execute the same in the same manner as if such writ or precept had been issued out of such county court, and such high bailiff shall take all the usual and proper fees thereupon, and shall make a return of what he shall have done thereunder to the bailiff or serjeant-at-mace of the court; and in all matters done under such writ or precept, or in relation thereto, such high bailiff shall be under the direction and control of the judge of the county court of which he is high bailiff, as if such writ or precept had issued out of such county court: Provided always, that the costs of more than one writ, precept, or warrant shall not be allowed against the execution debtor unless by order of the judge of the said court.

Judge may appoint a deputy.

7. A judge of any court may appoint a deputy or assistant judge to execute any particular portion or duty of such judge, such appointment being under such orders, rules, and regulations as Her Majesty by Order in Council may direct, provided such deputy shall be a barrister of not less than seven years' standing.

A deputy appointed by a recorder when acting as judge of the borough civil court is only required to be a barrister of five years' standing. See s. 175 (2) of the Municipal Corporations Act, 1882, *ante*, p. 128. As to the power to appoint a deputy where the recorder is incapable of making the appointment, see the note to s. 166 of that Act, *ante*.

By an order in Council contained in the London Gazette of June 27th, 1873, the appointment of a deputy under this section must be made by an instrument in writing under the hand of the judge, and must specify the particular duty or portion of the duty of the judge which he is to execute, and the cause or reason which renders the appointment expedient, and the period for which he is to be appointed. The appointment is not to be valid without the approval in writing of the Lord Chancellor.

Proviso as to City of London Court.

8. Provided always, that in the City of London Court the same fees shall always be taken as are for the time being taken in the county

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courts: Provided also, that the provisions in section 12 of the schedule shall not be applied to the City of London Court, or to the Court of Record for the Hundred of Salford.

THE SCHEDULE TO WHICH THE ACT REFERS.

Interpretation of terms.

1. In the construction of the following provisions the word "court" shall be understood to mean the Court of Record to which such provisions as aforesaid, or any of them, are made applicable by an Order of Her Majesty in Council. The word "judge" shall be understood to mean the judge, deputy or assistant judge, for the time being of such court. The words "superior courts" shall be understood to mean the superior courts of common law at Westminster.

Power to judge when out of the jurisdiction to hear motions.

2. The judge may, at any time within such time and such manner as is permitted by the rules of the court, and whether the court be sitting or not, and either when within or when out of the limits of the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment non obstante veredicto, or for a repleader, or for granting new trials, or for entering nonsuits and verdicts in causes pending in the court, to the same extent and subject to the rules and regulations to be made in respect thereof in the same manner as rules and regulations are made in the court; and all rules and orders made by the judge upon the hearing of such motions out of court shall be as valid and binding upon the parties as if the same had been made during the sittings of the court.

Judge to determine fees payable to registrar and officers of the Court.

3. The judge shall and he is hereby required to make and settle a table of the fees to be taken by the registrar and the bailiff or other officers of the court, and such table of fees shall be submitted to two judges of the superior courts; and if such table of fees shall be confirmed and allowed by such judges, either as such table shall have been submitted to them, or with such alterations additions or abatements as they shall think proper, the fees therein mentioned, and no other, may thenceforth be lawfully taken by the officer therein declared to be entitled thereunto.

The fees to be taken in a borough civil court are to be fixed by the town council, subject to the approval of the Home Secretary, under s. 178 (3) of the Municipal Corporations Act, *ante*, p. 129.

Power to judge to alter fees from time to time.

4. It shall be lawful for the judge from time to time, as occasion shall require, to make and settle a new table of fees to be taken instead of the fees contained in the table of fees which shall have been made and settled as aforesaid, but such new table shall be of no validity until confirmed and allowed in the manner hereinbefore mentioned.

Table of fees to be exhibited.

5. The registrar shall cause a true copy of the table of fees in force for the time being to be exhibited in a conspicuous part of the office of the registrar.

A special case may be stated for the opinion of one of the superior courts at Westminster.

6. The parties in any action may, after issue joined by consent and by order of the registrar, state the facts of the case in the form of a special case for the opinion of any one of the superior courts, and may agree that a judgment shall be entered in the court for the plaintiff or defendant, as such superior court shall think fit.

Special case to be transmitted by the registrar to the rule department.

7. The registrar shall transmit such special case under seal of the court to the rule department of the Master's office of the superior court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the superior court as are usual with reference to cases stated for the opinion of such superior court in actions therein pending.

Upon production to

8. The registrar, upon the production of an office copy of the rule of the superior court made upon hearing such special case, shall enter judgment in the court in conformity with the decision of the superior court.

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registrar of rule of superior court, judgment to be entered.

Removal of judgments into the superior courts.

9. In all cases where final judgment shall be obtained in any action brought in the court, where the sum recovered, exclusive of costs, is not less than twenty pounds, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money not less than twenty pounds, it shall be lawful for any judge of any of the superior courts, either in term or vacation, upon the application of any person entitled to the benefit of such judgment, rule, or order, and upon the production of such judgment, rule, or order, under the seal of the court and signature of the proper officer, to direct such judgment, rule, or order, or a copy of such judgment, rule, or order, verified by affidavit, to be filed with the clerk of the judgments of one of the superior courts, and thereupon such judgment, rule, or order shall be of the same effect as a judgment recovered in or a rule or order made by such superior court, and all proceedings shall and may be immediately had and taken thereupon, or by reason or in consequence thereof, as if such judgment so recovered or rule or order so made, had been originally recovered in or made by the superior court; and all the reasonable costs and charges of such application and removal shall be recovered in like manner as if the same were part of such judgment, rule, or order.

Commission may be issued by a judge of a superior court to examine witnesses abroad.

10. Upon the application of any of the parties to any such action depending in the court, any one of the judges of the superior courts at Westminster may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Nonsuit.

11. The judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

No actions to be removed into superior courts but on certain conditions.

12. No action entered in the court shall before judgment be removed or removable from the court into any superior court by any writ or process, except by leave of a judge of one of the superior courts in cases which shall appear to such judge fit to be tried in one of the superior courts, and upon such terms, as to payment of costs, security for debt and costs, or such other terms, as such judge shall think fit.

THE BOROUGH FUNDS ACT, 1872.

(35 & 36 VICT. c. 91.)

An Act to authorise the application of Funds of Municipal Corporations and other governing bodies in certain cases.

[10th August, 1872.]

Interpretation of terms.

1. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: Provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

The Cambridge Improvement Commissioners are now abolished, and their powers and duties have been transferred to the corporation by 52 & 53 Vict. c. cxvi.

As to county councils, see the note to s. 2, *post*.

Costs of promoting or opposing Parliamentary and other proceedings for benefit of inhabitants to be charged on borough and local funds, except in certain cases.

2. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament: Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious.

The effect of this section is to enable a borough council who have complied with the preliminary requirements contained in s. 4, to pay out of the borough fund the

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expenses of proceedings which could not be justified under the provisions of the Municipal Corporations Act, 1882. See *Attorney-General* v. *Swansea Corporation*, [1898] 1 Ch. 602; 67 L. J. Ch. 356; 78 L. T. 412; 46 W. R. 534; 62 J. P. 408; 14 T. L. R. 322. The purposes to which the borough fund may be applied are defined by s. 140 of the Act of 1882, *ante*, p. 105.

As to what are legal proceedings within the meaning of this section, see the judgment of Lord Macnaghten in *Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404; 15 T. L. R. 370.

The powers conferred by this section may be exercised with reference to bills for confirming provisional orders made with respect to railway rates and charges under s. 24 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), by virtue of s. 1 of the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 & 55 Vict. c. 12).

County Councils.—By s. 15 of the Local Government Act, 1888, *post*, p. 418, county councils were given the same powers of opposing bills in Parliament and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their counties as were conferred on borough councils by this Act; and the provisions of this Act were extended to a county council as if such council were included in the expression "governing body," except that no consent of owners and ratepayers was to be required for any proceedings under that section. It was, however, expressly provided that that section should not empower a county council to promote any bill in Parliament or to incur or charge any expense in relation thereto. This proviso has now been repealed by the County Councils (Bills in Parliament) Act, 1903, *post*, p. 628, which extends the powers conferred upon county councils by the Act of 1888 so as to authorise them to promote bills as well as to oppose them.

No payment to member of governing body to be so charged.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such bill shall be charged as aforesaid.

Costs of promoting or opposing bills to require sanction of special meetings.

4. No expense in relation to promoting or opposing any bill or bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such board, [*and in respect of other matters, the approval of one of Her Majesty's Secretaries of State,*] and in case of the promotion of a bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the bill in Parliament: [*Provided further, that no expense in promoting or opposing any bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act* (1858) *for the adoption of that Act.*]

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The powers conferred upon the Secretary of State by this Act have been transferred to the Local Government Board by s. 8 of the Borough Funds Act, 1903 (3 Edw. 7, c. 14), *post*, p. 632.

The proviso at the end of this section has been repealed by the same Act and is now replaced by s. 1 of the Act of 1903, which prohibits the council of a borough or urban district from charging any expense in relation to the promotion of a bill in Parliament under this Act unless they have obtained the consent of the parochial electors in the manner provided by schedule 1 of that Act. The consent of the electors is no longer required in respect of the expense of opposing a bill.

Section 8 of this Act contains a saving for any special provision contained in any other Act for the payment of the costs and expenses intended to be provided for by this Act, and for any rights or powers already possessed or enjoyed by a borough council under any general or special Act. As to the costs of provisional orders made under the Public Health Act, 1875, or the Local Government Act, 1888, see the note to that section, *post*.

This Act does not interfere with the right of a municipal corporation either under the provisions of the Municipal Corporations Act, 1882, or under the general law relating to trustees, to defend themselves against any attack that is made, whether by bill in Parliament or otherwise, against their existence as a corporation or against any of their property, rights, or privileges. *Attorney-General* v. *Mayor of Brecon*, *ante*, p. 182.

In cases where the requirements of this Act have not been complied with, and there is no surplus of the borough fund, the council will be restrained by injunction from paying the expenses of opposing a bill in Parliament out of the borough fund unless they can show that some such attack has been made against them. See the cases cited in the notes to Rule 12 of the Fifth Schedule, Part 2, to the Municipal Corporations Act, 1882, *ante*, p. 182.

Proviso as to approval of Local Government Board, &c., to any such resolution.

5. The approval of the Local Government Board [*or one of Her Majesty's principal Secretaries of State, as the case may be,*] shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board [*or Secretary of State*] objecting to such approval.

The powers conferred by this Act upon the Secretary of State are now transferred to the Local Government Board by the Borough Funds Act, 1903, *post*, p. 632.

Costs to be examined.

6. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorised [*by one of Her Majesty's principal Secretaries of State or*] by the Local Government Board, [*as the case may be.*]

See the note to s. 5.

Power to direct local inquiry.

7. The Local Government Board, [*or one of Her Majesty's principal Secretaries of State*], shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

See the note to s. 5.

Saving clause.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be

provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act. Section 8.

Section 4 of the Borough Funds Act, 1903, *post*, contains a similar saving clause, and enables the council, if they think fit, to adopt with respect to the promotion of any bill the procedure provided by that Act in lieu of that provided by their local Act.

Section 298 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), *post*, p. 452, provides that the reasonable costs of any local authority in respect of provisional orders made in pursuance of that Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, are to be deemed to be expenses properly incurred for purposes of that Act by the local authority interested in or affected by such provisional orders, and are to be paid accordingly. That section is made applicable to provisional orders made under the Local Government Act, 1888, by s. 87 of that Act, *post*, p. 450. A provisional order having been made under s. 54 of the Act of 1888 for the extension of a borough by the inclusion within it of part of an adjoining urban district, it was held that the costs incurred by the urban district council in opposing the provisional order and the confirming bill in Parliament were authorised by s. 298 of the Public Health Act, 1875, and were exempted from the requirements of the Borough Funds Act by this section, *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601 ; 71 L. J. K. B. 109 ; 85 L. T. 785 ; 66 J. P. 293 ; 18 T. L. R. 139.

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10. The provisions of this Act shall not extend to applications for any bill in Parliament for any object which would, for the time being, be attainable by provisional order. Act not to extend to bills if object attainable by provisional order.

11. This Act shall not extend or apply to Ireland or the city of London [*or the metropolitan area as defined by the Metropolitan Local Management Act*, 1855.] Act not to apply to the Metropolis.

The provisions of this Act have been extended to the councils of metropolitan boroughs by s. 6 (6) of the London Government Act, 1899 (62 & 63 Vict. c. 14).

The words in brackets have been repealed by the Borough Funds Act, 1903, *post*, s. 9 of which makes the provisions of that Act applicable to the council of a metropolitan borough.

THE LOCAL LOANS ACT, 1875.

(38 & 39 VICT. c. 83.)

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August, 1875.]

(1.) *Preliminary.*

Short title.

1. This Act may be cited for all purposes as "The Local Loans Act, 1875."

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

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Definition of borrowing under Act.

4. A local authority shall be deemed to borrow subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock or annuity certificates purporting to be created under its powers, or partly in one way and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.

This Act does not itself give any power to borrow, but regulates the manner in which a local authority may borrow any loan which it is authorised by some other Act to borrow. See s. 31, *post.*

The local authority for the purposes of this Act in a borough is the town council. See s. 34, *post.*

"Prescribed" means prescribed by the Act which authorises the local authority to borrow money (s. 34).

(2.) *Debentures.*

Regulations as to debentures.

5. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interset thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act

referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority. Section 5.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

The expression "local rate" is defined in s. 34, *post*.

(3.) *Debenture Stock.*

6. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock. Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorised to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof. Regulations as to debenture stock.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interset thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

Section 6.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

It is to be noticed that this Act does not itself give power to issue debenture stock.

As to composition for stamp duty on the stock and funded debt of any corporation, and on any share warrants or stock certificates relating thereto, see s. 115 of the Stamp Act, 1891 (54 & 55 Vict. c. 39). As to the stamp duty on stock certificates to bearer, see the schedule to that Act.

(4.) *Annuity Certificates.*

Regulations as to annuity certificates.

7. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds. Section 7.

(5.) *Priority of Loans.*

8. All sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities. Priority of loans.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorised to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorised to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) *Notice of Trusts.*

9. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act. Notice of trusts not receivable.

10. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof. Owners of securities not responsible for acts of local authority.

(7.) *Remedy for Non-payment.*

11. The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a mandamus will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a mandamus may be claimed. Remedy by mandamus for non-payment of money.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or Remedy by appointment of receiver for non-payment of money.

Section 12. in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as herein-after mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(8.) *Discharge of Loan.*

Loan borrowed to be discharged within prescribed period.

13. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

By the issue of annuity certificates limited to expire within the prescribed period; or,

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over

the whole of the prescribed period, or over a less time than the prescribed period; or,

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or,

Where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

Every loan borrowed in the manner provided by this Act may now be discharged by means of a sinking fund, whether this method is prescribed by the special Act which authorised the loan or not. 48 & 49 Vict. c. 30, s. 4, *post*, p. 408.

Discharge of loan by appropriation of annual sum.

14. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in presence of the local authority and any owners of debenture or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice at * the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

* *Sic.*

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

Discharge of loan by sinking fund.

15. Where a sinking fund is prescribed for any loan or part of a loan, the local authority shall create a sinking fund as herein-after mentioned; that is to say,

(1.) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorised to make investments,) will at the expiration of some period not longer

Section 15.

than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,

(2.) The first of such payments shall be made within one year from the date of the loan; and,

(3.) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorised to invest, or in debentures, debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed; and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and,

(4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose:

(5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner herein-before in this Act mentioned:

(6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient:

(7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act:

(8.) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sums required by this section to be paid into the sinking fund may cease to be so paid.

As to the power to create a sinking fund, see the note to s. 13.

As to the investment of the sums required for a sinking fund, see the note to s. 113 of the Municipal Corporations Act, 1882, *ante*, p. 91.

Section 16.

Annual return as to sinking fund.

16. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the Board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that Board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by mandamus.

Supplemental Provisions.

(1.) *As to Coupons.*

Temporary issue of coupons.

17. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

Endorsement and crossing of coupons.

18. A coupon payable to order, which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser.

Where a coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or of the words "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

Coupons issued in respect of a security are exempt from

19. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

Section 20.

(2.) *As to Stock Certificates.*

stamp duty as if attached thereto.

Conversion into nominal debenture stock of stock in certificate to bearer.

20. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

21. * * * * *

This section has been repealed by s. 51 of the Trustee Act, 1893 (56 & 57 Vict. c. 53), and is now replaced by s. 7 of that Act, which provides as follows :—

" 7.—(1.) A trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, that is to say :

(*a*) The India Stock Certificate Act, 1863 ;
(*b*) The National Debt Act, 1870 ;
(*c*) The Local Loans Act, 1875 ;
(*d*) The Colonial Stock Act, 1877.

" (2.) Nothing in this section shall impose on the Bank of England or of Ireland or on any person authorised to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted."

(3.) *As to Execution and Supply of Securities.*

Execution and supply of securities.

22. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4.) *As to Register of Nominal Securities.*

Register of nominal securities.

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

(1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and

(2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

Section 24.

Inspection of register.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification of register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

As to the rights of an innocent party who has been registered in respect of a forged transfer of stock, see *Sheffield Corporation* v. *Barclay*, [1905] A. C. 392 ; 74 L. J. K. B. 747 ; 93 L. T. 83 ; 54 W. R. 49 ; 69 J. P. 385 ; 10 Com. Cas. 287 ; 12 Manson, 248 ; 3 L. G. R. 992 ; 21 T. L. R. 642.

(5.) *As to Loans under Official Sanction.*

Permissive issue of securities under official sanction.

26. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorise the issue of such securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said

Section 26.

matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars; that is to say,

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan in respect of which such security is issued and of the other loans (if any) of the borrowing authority;

and such statement shall be evidence of the particulars therein stated.

(6.) *As to Investments on Loans under Act.*

27. * * * * *

This section has been repealed by s. 51 of the Trustee Act, 1893 (56 & 57 Vict. c. 53), and is now replaced by s. 5 (3) of that Act, which provides as follows:—

"5.—(3.) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875."

By s. 1 of the same Act a trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands in nominal or inscribed stock issued or to be issued by the corporation of any municipal borough having according to the returns of the last census prior to the date of investment a population exceeding 50,000 or by any county council under the authority of any Act of Parliament or provisional order. See *Re Druitt*, [1903] 1 Ch. 446; 72 L. J. Ch. 441; 88 L. T. 483; 67 J. P. 99; 1 L. G. R. 353; 19 T. L. R. 269.

Power for Public Works Loan Commissioners to take securities under Act.

28. When the Public Works Loan Commissioners are authorised to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7.) *As to General Rules.*

Application of rules in schedule.

29. The general rules in the schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Section 30.

Power to make general rules.

30. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters:

(1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and,

(2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(8.) *As to Borrowing.*

Borrowing and re-borrowing by local authorities.

31. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorised to borrow.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

As to the power of a municipal corporation to borrow money, see ss. 106 and 120 of the Municipal Corporations Act, 1882, *ante*, pp. 87, 96. The power to borrow money may be exercised by the creation of stock in accordance with regulations prescribed by the Local Government Board. Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 52.

(9.) *As to Forgery and Loss of Securities.*

Forgery of securities.

32. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Loss of securities.

33. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as they may

Section 33. require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid, or destroyed.

(10.) *Definitions.*

Definitions.

34. For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorising a local authority to borrow money:

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate as in this Act defined, also any prescribed authority:

"Municipal authority" means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Acts amending the same:

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly:

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise:

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act:

"Person" includes a body of persons corporate or unincorporate:

"Executors and administrators" includes successors.

The definition of "municipal borough" is now to be read as referring to the Municipal Corporations Act, 1882. See s. 242 of that Act, *ante*, p. 160.

* * * * *

SCHEDULE.

GENERAL RULES.

Transfer of Nominal Securities.

(1.) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them.

(2.) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by a local authority shall be executed

both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3.) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

Transmission of Nominal Securities.

(4.) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognised by the local authority as having any title to such security.

(5.) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

(6.) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8.) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9.) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

THE PUBLIC WORKS LOANS ACT, 1875

(38 & 39 VICT. c. 89.)

An Act to consolidate with Amendments the Acts relating to Loans for Public Works. [13th August, 1875.]

This Act has been amended from time to time by subsequent Public Works Loans Acts, the provisions of which, so far as they relate to loans made to the council of a borough, are set out in the notes to this Act. The sections which have been repealed are for the most part omitted.

Preliminary.

Short title.

1. This Act may be cited as the "Public Works Loans Act, 1875."

Extent of Act.

3. This Act shall extend to the Isle of Man.

Public Works Loan Commissioners.

Constitution, &c., of Public Works Loan Commissioners.

4. For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act and of any enactment passed or hereafter to be passed authorising or referring to such loans, there shall be a body of Commissioners (in this Act referred to as the Loan Commissioners), who may be styled the Public Works Loan Commissioners.

Every person who may from time to time be appointed by Act of Parliament a Public Works Loan Commissioner shall, on signing the declaration in the second schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act.

The Public Works Loan Commissioners shall hold office during such period as may be authorised by any Act appointing them, and if no period is so authorised, during the period of five years after the passing of such Act, and, if at the expiration of such period successors have not been appointed, may continue to hold office until successors be appointed, subject to this qualification, that they shall not grant any new loan after the expiration of such period.

Whenever any vacancy among the Commissioners occurs by any Commissioner dying or declining to act, or declining further to act, the remaining Commissioners or a majority of them may by writing under their hands and seals, with the concurrence of the Treasury, appoint such person to fill the vacancy as seems fit, and the person so appointed shall, on signing the declaration in the second schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act, and shall hold office for the period during which the Commissioner in whose place he is appointed would have held office.

A Public Works Loan Commissioner shall not receive any salary, fee, or emolument in respect of his services as such Commissioner. Section 4.

For the names of the present Commissioners, who are to hold office until April, 1911, see 5 Edw. 7, c. 22, s. 1.

5. With respect to the Loan Commissioners the following provisions shall have effect: Powers, &c., of Commissioners.

(1.) The Loan Commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit in law or equity brought or commenced by or against the said Commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said Commissioners; but the secretary to the said Commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit as the case may be; and

(2.) The Commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration; and

(3.) The Loan Commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the Commissioners either before or after the passing of this Act, and the execution of the duties of the Loan Commissioners, and such other particulars as the Loan Commissioners may from time to time think fit:

Such particulars shall include a statement of any difference that may have arisen between the Loan Commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the Loan Commissioners:

Such report shall be transmitted to the Treasury within two months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament; and

(4.) Any minute made of proceedings at meetings of the Commissioners, if signed by any person purporting to be the chairman, either of the meeting of the Commissioners at which such proceedings took place, or of the next ensuing meeting of the Commissioners, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the Commissioners, in respect of the proceedings of which minutes have been so made, shall be

Section 5.

deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act; and

(5.) An act or proceeding of the Commissioners shall not be questioned on account of any vacancy or vacancies in their body.

The time within which the Commissioners' report is to be transmitted to the Treasury under sub-s. (3) has been extended to three months by 62 & 63 Vict. c. 31, s. 6.

Officers and their salaries and expenses.

6. The Loan Commissioners may from time to time appoint or employ a secretary, solicitor, civil engineer, surveyor, and such number of officers, clerks, messengers, and other persons as they may, with the consent of the Treasury, deem necessary, and may remove any person so appointed or employed.

The Loan Commissioners may from time to time assign to any person so appointed or employed by them such salary or remuneration as they may, with the sanction of the Treasury, think proper.

A person appointed or employed by the Loan Commissioners, in pursuance of this section, shall not receive any remuneration in respect of such appointment or employment or otherwise in respect of the execution of his duties under this Act, except such as may be assigned to him in pursuance of this section.

Every such salary or remuneration, and all expenses incurred by the Loan Commissioners in the execution of this Act, shall be paid out of moneys provided by Parliament.

Securities given to and property vested in secretary to vest in his successor.

7. Where under this or any other Act or any conveyance, obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the Loan Commissioners for the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as often as the same happens and the appointment of a successor takes place, shall (subject to the same trusts and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act and without any act or deed whatever to be done by the secretary dying, resigning or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary dying, resigning, or removed.

Where the secretary of the Loan Commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the Commissioners shall be deemed to represent the Crown,

so far as regards the interest of the Crown in any loan granted under this Act or any money due under a security for any such loan, and it shall not be necessary to make the Crown or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid. Section 7.

8. All conveyances, leases, mortgages, releases, arrangements, and things which the Loan Commissioners are authorised by this Act to grant, execute, make, or concur in, and all powers, acts, and things which the Loan Commissioners are authorised by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary, shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the Commissioners, unless the contrary is shown by some person interested in contesting the validity thereof. Execution of conveyances, leases, &c., by secretary on behalf of Commissioners.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exerciseable by the secretary of the Commissioners in pursuance of this Act shall be dealt with and exercised by him under the direction of the Commissioners and not otherwise.

Objects, Terms, and Duration of Loan.

9. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the first schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose. Loans for public works.

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament.

Among the works mentioned in the First Schedule are police stations and justices' rooms of any borough, and the offices connected therewith, as to which see s. 105 of the Municipal Corporations Act, 1882, *ante*, p. 86. The Commissioners may now lend for the purpose of any work for which the council of a borough are authorised to borrow. 59 & 60 Vict. c. 42, s. 2.

The advances made by the Commissioners under any one Act in any one financial year to one borrower were formerly limited to one hundred thousand pounds in the aggregate by 42 & 43 Vict. c. 77, s. 3, but this limit has been repealed by 60 & 61 Vict. c. 51, s. 3.

10. Every loan granted under this Act shall bear interest at a rate not less than the rate authorised by a special Act relating to such loan, or if no rate be so authorised, not less than five per cent. per annum; provided that when the aggregate amount of principal moneys due by any harbour authority to the Commissioners under "The Harbours and Passing Tolls, &c. Act, 1861," exceeds one hundred thousand pounds, the rate of interest on such excess shall be three and a half Interest on loan.

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per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

The rate of interest is now to be fixed by the Treasury, having regard to the duration of the loan, and is to be such a rate not less than $2\frac{3}{4}$ per cent. per annum as in their opinion is sufficient to enable the loan to be made without loss to the Local Loans Fund. 60 & 61 Vict. c. 51, s. 1. The rates now in force are fixed by a minute of the Lords of the Treasury dated January 18th, 1900, and published in the London Gazette of January 19th, 1900, as follows:

Periods of Repayment.	*Rates of Interest.*
Not exceeding 30 years - - -	$3\frac{1}{4}$ per cent. per annum.
Not exceeding 40 years - - -	$3\frac{1}{2}$ per cent. per annum.
Not exceeding 50 years - - -	$3\frac{3}{4}$ per cent. per annum.

Term of years for repayment of loan.

11. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised not exceeding twenty years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners.

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period should be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

The maximum period for repayment has been extended to thirty years by 61 & 62 Vict. c. 54, s. 5.

Security for loans.

12. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorised by the special Act relating to the loan, or if none is so authorised, of a mortgage of property or of a rate, or of both property and a rate, and (save as herein-after mentioned) of personal security.

The Loan Commissioners may, if they think fit, dispense with

personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period. Section 12.

So much of any Act as requires the Commissioners to take in respect of any loan advanced by them under that Act any of the securities issuable under the Local Loans Act, 1875, *ante*, p. 286, in preference to any other securities, is repealed by 41 & 42 Vict. c. 18, s. 6.

13. * * * * *

15. * * * * *

The annuities created in pursuance of this section, and the principal moneys borrowed in pursuance of this section (otherwise than by the issue of Exchequer bonds), and all interest from time to time due thereon, or on Exchequer bonds issued under this section (not exceeding the rate of five per cent. per annum) shall be charged upon and be payable out of the Consolidated Fund, or out of the growing produce thereof, at such times in each year as may be fixed by the Treasury. Borrowing for the purpose of raising money.

The principal of any Exchequer bonds issued under this section shall be paid out of moneys provided by Parliament.

* * * * *

The said annuities shall, in manner directed by the warrant, be consolidated in the said books, if terminable, with annuities payable at the same date, and, if permanent, with annuities at the same rate of interest, and payable at the same date, and shall be transferable in the said books in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

* * * * *

Recovery of Loans.

18. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the Commissioners and secured by a mortgage of the property executed to a person who is entitled as a *bonâ fide* creditor to the repayment thereof with interest. Charge on property and priority of loan by the Commissioners.

Provided that if there is more than one such creditor and not less than four-fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the Commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act, and no rule of law or custom shall affect

Section 18. the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act.

The term "special Act" here includes any Act relating to any person having power to borrow money from the Commissioners. 39 & 40 Vict. c. 31, s. 7.

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

19. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the Commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the Commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

20. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the Commissioners on their behalf. Every such security is in this Act referred to as a security given to the Commissioners.

Taking possession by Commissioners of property on default of payment.

21. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the Commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things; namely,

(1.) Take possession of the mortgaged property, or any part thereof; and

(2.) Grant any lease of the mortgaged property, or any part thereof, for such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and

(3.) Sell or mortgage the mortgaged property, or any part thereof.

Powers of Commissioners when in possession.

22. The Loan Commissioners, when authorised to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,—

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(1.) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exerciseable by the mortgagor or any person claiming through or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same, shall become vested in the secretary of the Commissioners; and

(2.) The Commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in their secretary by this Act; and

(3.) The Commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the Commissioners may think expedient; and

(4.) The Commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage; and

(5.) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the Commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorise the purchaser with the like consent to destroy the same, and sell or authorise the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the Commissioners, nor their secretary, nor the purchaser so authorised, nor his representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction; and the provisions of this Act with respect to the sale of any mortgaged property shall apply to any sale under this section; and

(6.) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the Commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the

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taking of possession became vested in the secretary of the Commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom the same would have been vested if possession had not been taken, but the Commissioners may, if they think fit, on the relinquishment of possession, reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them:

(7.) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act.

The rate of interest on advances made under clause (4) must not be less than 5 per cent. 44 & 45 Vict. c. 38, s. 7.

Powers in relation to rate where default made.

23. Where a loan made by the Commissioners is secured by the mortgage of a rate (whether with or without any other security), and the Commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the Commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the Commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the Commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the Commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor.

The Commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the Commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the Commissioners shall be paid by them to the mortgagor.

The Commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revest in the mortgagor, subject to the said reservations and conditions.

Liability of Commissioners after taking possession or in default of payment.

24. When the Loan Commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers,

or for any moneys other than those which have actually come to their or his hands. Section 24.

Sale and mortgage by Commissioners of mortgaged premises.

25. Where the Loan Commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the Commissioners may think proper.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the Loan Commissioners may, if they think fit, sell in such manner and subject to such conditions, stipulations, and agreements as they may think expedient for the purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof, with a view to the public good or general benefit or for any other purpose, notwithstanding such conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property.

The Loan Commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

Purchaser not liable to see to the validity of sale or application of money.

26. Every sale or mortgage made by the Commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorised, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire.

The receipt in writing of the Bank of England, or one of their cashiers or other proper officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable or in any manner accountable for the misapplication or non-application thereof.

Terms of lease, sale, or mortgage.

27. Any lease, mortgage, conveyance, or other disposition made by the secretary of the Commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the Loan Commissioners, or their secretary, either before or after possession taken, and the same shall thereupon be

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vested in and may be exercised and put in force by such person accordingly.

Nothing in this Act shall operate to invalidate or affect the rights of any person entitled *bonâ fide* to any debt, estate, or interest, having priority over or ranking *pari passu* with the loan granted by the Commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the Commissioners.

See the definitions of the expressions "mortgage," "conveyance," and "prescribed" in s. 51, *post*.

Application of money arising on taking possession, sale, mortgage, &c., by Commissioners.

28. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act by or under the direction of the Loan Commissioners of any mortgaged property shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the Commissioners in respect thereof, or otherwise by reason of the default in payment, and secondly in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage.

The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or, if the Commissioners think fit, shall be paid by the secretary of the Commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

Payment of loan before it is due, and transfer of security for all or part of loan.

29. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged property or rate to the person paying the same, or as he may direct, upon such terms and conditions and in such manner and form as the Commissioners may think expedient.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the Commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the Commissioners by the conveyance.

The Commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

Discharge of security and revesting of

30. Upon all money due under a mortgage under this Act being fully paid the Commissioners shall, when required, give in the

prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the Commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act shall, (unless the Commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof,) revest in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the Commissioners. Section 30. property on repayment of loan.

31. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for the payment thereof or part thereof has not arrived, unless in the case of a surety the Commissioners think fit to accept some other surety. Bankruptcy of debtor.

32. Every security given under this Act may be in such form as may be prescribed, and the fact of the secretary of the Loan Commissioners being a party thereto shall be conclusive evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act. Form of mortgage.

33. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of Her Majesty, her heirs and successors, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine: but no person shall be liable for any larger sum than that which he is expressed to be bound to pay. Recovery of debt on personal security.

Every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case.

The Loan Commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the Loan Commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an

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immediate writ of extent, or of *diem clausit extremum*, to issue without any writ of *scire facias* or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the Loan Commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

Recovery of loan after the expiration of term for repayment.

34. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan.

Supplemental Provisions as to Loans and Securities.

Security for completion of works partly finished or not commenced.

35. Where the Commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to Her Majesty or otherwise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest of the public.

Examination as to proper application of moneys lent.

36. Where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor.

As to the powers of a poor law inspector, see 10 & 11 Vict. c. 109, ss. 20, 21.

Where it appears that any part of the loan has not been applied to the purpose for which it was advanced, the Local Government Board may order that sum to be applied either to the said purpose or towards the repayment of the loan, or partly in one of these ways and partly in the other; and if it appears that any part of it has been applied for some purpose other than that for which it was advanced, the Board may order a sum equal to the amount so misapplied to be raised and applied as directed by the order. Any such order may be enforced by writ of *mandamus*. 41 & 42 Vict. c. 18, s. 4.

The Local Government Board may make orders as to the parties by whom and the rates out of which the expenses incurred by the Board or by any officer appointed by them under this section are to be borne, and any such order may be made a rule of the High Court. 44 & 45 Vict. c. 38, s. 8.

The unapplied balance of any loan may now, with the consent of the Commissioners and of the central authority or department, if any, with whose sanction or consent the loan was authorised, be applied to any purpose to which moneys borrowed on the security of the rate are properly applicable; and in construing

this section and s. 4 of 41 & 42 Vict. c. 18, the purpose to which the unapplied balance is so applied is to be deemed to be the purpose for which that portion of the loan was advanced. 44 & 45 Vict. c. 38, s. 9. Section 36.

In the case of any loan made under this Act the borrowers are required by 45 & 46 Vict. c. 62, s. 8, to keep a separate account to the credit of which all such advances are to be carried, and all orders directing payment out of such account are to show on the face of them that the payment is to be made out of that account. No such order is to be made unless the payment is for a purpose for which the advances were made.

Suspension of payment of principal and interest.

37. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the Commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorise.

Change of security.

38. The Loan Commissioners may, subject to the prescribed regulations, if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the Commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Concurrence by Commissioners in leases, sales, &c., of mortgaged property.

39. The Loan Commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

Special Provisions as to Borrowers.

Power to various authorities to mortgage and levy rates.

40. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices' room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act.

[*The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices' room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and*

Section 40. *interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act.*]

The said justices [*and council respectively*] shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct.

The second paragraph of this section, and the words " and council respectively " in the third paragraph, have been repealed by s. 5 of the Municipal Corporations Act, 1882, so far as relates to boroughs to which that Act applies, and are replaced by ss. 105 and 106 of that Act, *ante*, p. 86. See the note to s. 9, *ante*, p. 303, as to the purposes for which a borough council may borrow from the Loan Commissioners.

Miscellaneous.

Regulations by Commissioners.

41. The Loan Commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings of the Commissioners and the authentication of documents made or issued or directions given or acts done by them, and with respect to loans under this Act and applications therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the applicants, and with respect to the forms to be used, including the forms of the securities, and with respect to any fees or sums to be paid by the applicants or by other persons dealing with such Commissioners, and with respect to the relations between such Commissioners and the National Debt Commissioners and the Bank of England.

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they think fit, shall be published in the London Gazette, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section, shall after the expiration of six months after its publication in the London Gazette be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

The following regulations made by the Commissioners under this section will be found in the London Gazette of April 25th, 1876, January 6th, 1880, and January 27th, 1882, respectively:

Regulations made by the Public Works Loan Commissioners for carrying into effect the Public Works Loans Act, 1875.

1. All words used in these regulations shall have the same meaning as is assigned to them by the Public Works Loans Act, 1875, which Act is hereinafter referred to as " The Act."

2. The Loan Commissioners shall elect a chairman and deputy chairman, and three Commissioners shall form a quorum.

3. If at any meeting the chairman is not present, the deputy chairman shall be the chairman of the meeting, and if neither the chairman nor the deputy chairman

be present, then the Commissioners present shall choose one of their number to be the chairman of such meeting.

4. Meetings of the Commissioners shall be held as often as the business to be transacted may be found to require, and shall be convened by notice from the secretary.

5. All questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

6. A book to be called the minute book shall be kept, in which applications for loans and minutes of the proceedings and resolutions of the Commissioners shall be recorded, and such other books shall be kept as the Commissioners may think necessary.

7. * * * * *

8. When the Loan Commissioners shall have determined upon any amount of money to be advanced by way of loan pursuant to section 9 of the Act, the said Commissioners, or any three or more of them, shall forthwith certify such amount to the Commissioners for the Reduction of the National Debt for the time being, and at the foot of every such certificate the secretary shall state the name or names of the person or persons by whom every such certificate is to be presented to the said Commissioners for the Reduction of the National Debt, and upon every such certificate being lodged for seven clear days at the office of the said Commissioners for the Reduction of the National Debt, the Comptroller-General or other proper officer of the said Commissioners shall sign an order appended to such certificate for the payment of the sum mentioned therein to the person or persons named at the foot of the certificate, or to one of such persons, which order shall be addressed to the cashiers of the Governor and Company of the Bank of England; and the signature of such person or persons, jointly or severally, shall be sufficient discharge to the said Commissioners for the Reduction of the National Debt and to the said Governor and Company respectively, provided the total amount directed to be paid by such certificate or certificates respectively shall not at any time exceed the amount for the time being standing to the credit of the account referred to in section 16 of the Act.

9. Upon delivery to the borrower or his nominee of the certificate referred to in the last preceding regulation, such borrower or nominee shall pay at the office of the Loan Commissioners the amount of the fees referred to in regulation No. 7 as payable on any loan or instalment of a loan for which such certificate shall have been issued, together with the amount of stamp duty thereon, and the further amount, if any, of disbursements in respect thereof, and the receipt for any such amounts shall be signed by the officer in charge of the accounts, or in his absence by such person as may be nominated by the secretary.

10. All moneys payable towards the discharge of advances made by the Loan Commissioners and in payment of interest thereon, shall be paid by the borrower or his agent into the Bank of England to the credit of "The Public Works Loans Account," being the account directed by the Treasury under section 43, and such payments shall be made under authority to be obtained at the office of the Loan Commissioners empowering the Bank of England to receive the sum therein mentioned, and the receipt of the Bank of England for such payment shall be obtained at the office of the Loan Commissioners on the succeeding day.

11. Any receipt required to be given by or on behalf of the Loan Commissioners (other than for money paid into the Bank of England under regulation No. 10, and for sums payable under regulation No. 9), and any receipt and further discharge, if any, to be given when all money due under a mortgage has been fully paid, shall be so given by the secretary.

12. Any notice required by section 23 of the Act to be published shall be published once in a local paper circulating in the district where the rate is intended to be levied.

13. All documents of the Loan Commissioners not required to be signed by them shall, if purporting to be signed by the secretary, be deemed, until the contrary is proved, to be made or issued by the Loan Commissioners, and all directions given or acts done by the secretary shall be deemed, until the contrary is proved, to be given or done by the Loan Commissioners, and all documents may be proved by

Section 41.

the production of a copy or extract purporting to be signed by the secretary to be true.

For the purposes of this regulation no proof shall be required of the handwriting or official position of the person purporting to be the secretary.

14. The Loan Commissioners, regard being had to section 36 of the Act, shall, whenever they advance a loan on the security of a rate, inform the Local Government Board of such advance having been made, and of the purposes thereof.

15. The Loan Commissioners shall cause to be prepared an annual statement to the 31st day of March in each year, of the amounts issued to them for the purpose of making advances by way of loan under various Acts, the amounts advanced by them, the amounts paid into the Exchequer in repayment of such advances and for interest thereon, and the balances outstanding, and such statement shall be included in the annual report referred to in section 5, sub-section 3.

16. To enable intending borrowers to make the statement referred to in section 13 of the Act, the Loan Commissioners shall cause a form of statement to be prepared and issued to such intending borrowers on their written notification of intention to borrow, which form duly filled up must be returned to the Loan Commissioners on or before 31st December in each year.

The Loan Commissioners may, provided such notification be received at their office on or before the said 31st December, extend the period for return of such form of statement to any day not later than the 14th January in each year.

17. The assistant secretary of the Loan Commissioners shall under their directions be competent to perform any act authorised by the above regulations to be performed by the secretary.

Public Works Loan Board,
1*st April*, 1876.

W. W. WILLINK,
Secretary.

The Lords Commissioners of Her Majesty's Treasury approve these regulations, in conformity with the 41st section of the Act 38 & 39 Vict. c. 89.

13*th April*, 1876.

R. R. W. LINGEN.

Further Regulations made by the Public Works Loan Commissioners under the Public Works Loans Act, 1875.

1. All certificates which shall be given by the Loan Commissioners pursuant to the 8th of the regulations made on the 1st day of April, 1876, under the Public Works Loans Act, 1875, for advances which are intended to be made out of moneys provided by the Commissioners for the Reduction of the National Debt under the powers contained in the Public Works Loans Act, 1879, shall be lodged at the office of the last-mentioned Commissioners for such number of days as may from time to time be agreed upon between the same Commissioners and the Loan Commissioners, anything contained in the said 8th regulation to the contrary notwithstanding.

2. For the purpose of making payments to the Commissioners for the Reduction of the National Debt on account of principal or interest in respect of moneys advanced by them to the Loan Commissioners under the Public Works Loans Act, 1879, the Bank of England shall transfer, in accordance with section 7 of the said Act, from the Public Works Loans account to the credit of the National Debt Commissioners at the Bank of England such sums as may from time to time be directed by the Loan Commissioners, and every such direction shall be signed by their Secretary or Assistant Secretary.

Public Works Loan Board,
18*th December*, 1879.

W. W. WILLINK,
Secretary.

The Lords Commissioners of Her Majesty's Treasury approve of these regulations, in conformity with the 41st section of the Act 38 & 39 Vict. c. 89.

Treasury Chambers,
2*nd January*, 1880.

R. R. W. LINGEN.

Further Regulations made by the Public Works Loan Commissioners under the Public Works Loans Act, 1875. Section 41.

1. The fees or sums to be paid by the applicants pursuant to section 41 of the Public Works Loans Act, 1875, in respect of loans on rates shall not exceed the following sums, viz. :—

On loans not exceeding 2,000*l.*, 1*l.* 1*s.* for every 100*l.* of such loan ;

On loans exceeding 2,000*l.* and not exceeding 25,000*l.*, 21*l.*, plus 2*s.* 6*d.* for every 100*l.* by which such loan exceeds the sum of 2,000*l.* ;

On loans exceeding 25,000*l.*, 50*l.*

Where a loan is advanced by instalments secured by one deed, there shall be paid in respect of each advance after the first, an additional fee of 1*l.* 1*s.* for every 100*l.* of such advance, but not exceeding 3*l.* 3*s.*

For the purpose of this regulation the total amount to be advanced under one security deed shall be considered as a loan, and fractional parts of 100*l.* shall be considered as 100*l.*

In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees, and other disbursements incurred by the Loan Commissioners in respect of the several applications.

In respect of all business not being a loan on rates, the fees or sums payable shall be fixed by the Commissioners, regard being had to each particular case.

2. The above regulation shall come into force on the 1st day of February, 1882, and as from such date the regulation No. 7 of the regulations made by the Public Works Loan Commissioners on the 1st day of April, 1876, shall be rescinded.

Public Works Loan Board,
19*th January*, 1882.

E. R. Spearman,
Secretary.

The Lords Commissioners of Her Majesty's Treasury approve of these regulations, in conformity with the 41st section of the Act 38 & 39 Vict. c. 89.

Treasury Chambers,
25*th January*, 1882.

R. R. W. Lingen.

* * * * *

43. The Loan Commissioners shall keep at the Bank of England such account, and under such title as the Treasury may from time to time direct, and every such account shall be deemed to be a public account. Accounts.

Such accounts as the Treasury may from time to time direct of all moneys issued from or payable to the Consolidated Fund in pursuance of this Act during every financial year, and of all transactions under this Act during that year, including all sums due for the time being from any person in respect of any loan granted by the Loan Commissioners either before or after the passing of this Act, shall be kept by the National Debt Commissioners and the Loan Commissioners respectively, and such other persons (if any), and be audited by the Comptroller and Auditor General in such manner as the Treasury may from time to time direct.

44. Any person who, when examined by the Loan Commissioners in pursuance of this Act, or any regulation made under this Act, wilfully gives false evidence, or who, for the purpose of obtaining a loan under this Act, wilfully gives information to such Commissioners which is false in any material particular, shall be guilty of perjury. Perjury.

45. The warrant of the Treasury issued under the authority of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed to be done for the purposes of this Act, Authority, and laying before Parliament

Section 45. Treasury warrants.

and copies of any such warrant relating to the borrowing of money shall be laid before both Houses of Parliament, within one month of the date thereof, if Parliament be then sitting, and if not within one month after the then next meeting of Parliament.

Receipt for money payable on account of loan, &c.

46. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted under this Act, or of any sum due under any security made under this Act or otherwise payable to or by the direction of the Loan Commissioners or their secretary, shall be a complete discharge to the person paying the same.

Notices may be served by post.

47. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post.

Notices to and by Commissioners.

48. Notices and documents required by this Act, or by any regulation made under this Act, to be served on the Loan Commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the Commissioners.

Notices and documents required for the purposes of this Act, or of any regulation made thereunder, to be served by or on the Loan Commissioners, or to be made or issued by the Loan Commissioners, shall be in writing or in print, or partly in writing and partly in print.

Effect of schedules.

49. The schedules to this Act shall be construed and have effect as part of this Act.

Application of Act to loans under special Acts.

50. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in such special Act and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act, and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act.

The term "special Act" here includes any Act relating to any person having power to borrow money from the Commissioners. 39 & 40 Vict. c. 31, s. 7.

Section 51. Definitions.

51. In this Act, if not inconsistent with the context,—

The expression "person" includes a body of persons, whether corporate or unincorporate:

* * * * *

The expression "financial year" means the year ending the thirty-first day of March:

The expression "prescribed" means prescribed by the regulations made under this Act with the approval of the Treasury:

The expression "special Act" means any Act passed before the passing of this Act which authorises the Loan Commissioners to lend money for the purposes of any work mentioned in the first schedule to this Act, and any Act passed after the passing of this Act which authorises the Loan Commissioners to lend money for any purpose:

The expression "security" includes a mortgage:

The expression "mortgage" includes a charge and any instrument in the nature of a mortgage or charge, and in Scotland any heritable security:

The expression "conveyance" includes any grant, assignment, transfer, or other disposition or assurance; and the expression "convey" shall be construed accordingly:

The expression "rate" means a rate, cess, or assessment the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levy of a rate includes the issue and enforcement of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly:

Any toll, due, rent, imposition, and other sum not being a rate as above defined shall be deemed to be property for the purposes of this Act.

All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors, heirs, executors, administrators, and assigns of, or other persons claiming through or under such mortgagor, or borrower.

* * * * *

Temporary Provisions and Repeal.

Reference in Acts to repealed Acts.

55. A reference in any Act to any enactment hereby repealed, or to the Commissioners for the execution of any Act hereby repealed, shall, so far as is consistent with the tenor thereof, be deemed to refer to the corresponding enactment in this Act and to the Public Works Loan Commissioners under this Act.

Saving for loans and transactions under repealed Acts.

56. Save as otherwise provided by this Act this Act shall apply only to loans granted and securities made after the commencement of this Act.

The Loan Commissioners shall have the same power of making

Section 56.

further advances on any mortgage made before the commencement of this Act and intended to secure more than the sum which has actually been advanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The Loan Commissioners, on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing, may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the Loan Commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners, secretary, and officers as the commissioners, secretary, and officers under the Acts in pursuance of which such loan was granted and securities made, and all securities and documents relating to such commissioners, secretary, and officers shall be construed accordingly.

Repeal of Acts.

57. So much of any enactment as authorises any loan by the Public Works Loan Commissioners for the purpose of any work other than a work mentioned in the first schedule to this Act, or as is otherwise inconsistent with this Act, is hereby repealed.

Provided that—

(1.) The repeal of an enactment by this Act shall not affect—

* * * * *

(b) Any power to make or levy rates, or any other power capable of being exercised for the purpose of enabling or compelling the repayment of any money due on account of any loan granted by the Public Works Loan Commissioners before the commencement of this Act, whether the same or any part thereof has been actually advanced before or after such commencement.

SCHEDULES.

FIRST SCHEDULE.

Works for the Purpose of which the Commissioners may lend Money.

Baths and wash-houses provided by local authorities.

Burial grounds provided by burial boards, or (in Scotland) by burial boards or parochial boards.

Conservation or improvement of rivers or main drainage.

Docks.

Harbours and Piers, and any work for which the Public Works Loan Commissioners are authorised to lend by section three of the Harbours and Passing Tolls, &c. Act, 1861.

24 & 25 Vict. c. 47.

Improvement of towns.

Labourers' dwellings.

Schedule 1.

Lighthouses, floating and other lights for the guidance of ships, buoys, and beacons.

Lunatic asylums of any county or borough in Great Britain, or of any district or parochial board in Scotland.

Police stations and justices' rooms of any county or borough in Great Britain, and the offices connected therewith, also sheriff court buildings in Scotland.

Prisons.

Public libraries and museums.

Any schoolhouse or work for which a school board is authorised to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same, or under the Education (Scotland) Act, 1872. 33 & 34 Vict. c. 70.

Waterworks established or carried on by a sanitary or other local authority. 36 & 37 Vict. c. 86.

Workhouses or poorhouses, and any work for which guardians of the poor, or (in Scotland) any parochial board, are authorised to borrow under the general Acts relating to the relief of the poor. 35 & 36 Vict. c. 62.

Any work for which a sanitary authority are authorised to borrow under the Public Health Act, 1875.

Any work for which police commissioners are authorised to borrow under the General Police and Improvement (Scotland) Act, 1862, and any Act amending the same. 25 & 26 Vict. c. 101.

Any work for which a local authority are authorised to borrow under the Public Health (Scotland) Act, 1867, or any Act amending the same. 30 & 31 Vict. c. 101.

Any work for which the Commissioners are authorised to lend by any Act passed after the passing of this Act.

SECOND SCHEDULE.

Form of Declaration.

I, *A.B.*, do hereby declare that according to the best of my judgment I will faithfully and impartially execute the powers and duties of a Public Works Loan Commissioner according to law.

THE JUSTICES CLERKS ACT, 1877.

(40 & 41 VICT. c. 43.)

An Act to amend the Law with respect to the Appointment, Payment, and Fees of Clerks of Justices of the Peace and Clerks of Special and Petty Sessions. [10th August, 1877.]

14 & 15 Vict. c. 55.

WHEREAS by section nine of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-five, intituled "An Act to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders in certain cases" (in this Act referred to as "the principal Act"), it is provided that one of Her Majesty's Principal Secretaries of State (in this Act referred to as a Secretary of State) upon the recommendation of the justices, council or other governing body as therein mentioned (in this Act referred to as "the local authority"), may, by order, direct that the clerks of special and petty sessions and the clerks of justices of the peace within the jurisdiction of such local authority, or any of such clerks, are to be paid by salaries in lieu of fees and other payments, and fix the amount of salary so to be paid:

And whereas by the same Act the Secretary of State is authorised, on the recommendation of the local authority as therein mentioned, to order that certain business specified in the recommendation should not be included in fixing the salary of any clerk, and that such clerk should be paid for that business (in this Act referred to as excepted business) by fees and not by salary:

And whereas it is expedient to provide that all the said clerks should be paid by salary in lieu of fees, and to provide for the qualification, appointment, and fees of the said clerks:

Be it therefore enacted as follows:

The provisions of the Act 14 & 15 Vict. c. 55, which relate to justices' clerks are set out, *ante*, p. 238.

Short title.

1. This Act may be cited as the Justices Clerks Act, 1877.

Payment of clerks of petty sessions, &c., by salary under 14 & 15 Vict. c. 55, s. 9, made compulsory.

2. Where at the passing of this Act an order under the principal Act is not in force for the payment by salary in lieu of fees of any clerk of special or petty sessions or clerk of justices of the peace within the jurisdiction of any local authority, that local authority shall as soon as may be after the passing of this Act, and in any case before the first day of February one thousand eight hundred and seventy-eight, make a recommendation to a Secretary of State in pursuance of the principal Act with respect to the payment of such clerk by salary in lieu of fees, and the Secretary of State shall make an order directing

such payment ; and if, in the case of any of the said clerks, such recommendation as enables a Secretary of State to make an order under the principal Act is not received by the Secretary of State before the said first day of February, the Secretary of State shall, in like manner (so nearly as circumstances admit) as if such recommendation had been duly made, make an order under the principal Act, directing the payment of such clerk by salary in lieu of fees for all business (other than the business of giving copies of depositions if that business is excepted by the order) and fixing the amount of the salary.

Every such salary may, if it is thought fit, be made to vary according to the number of cases or amount of business.

Subject as aforesaid, every such salary shall be deemed to accrue from day to day and shall be paid quarterly or at such less intervals as may be from time to time fixed by the local authority.

The standing joint committee is substituted for the local authority under this section, so far as regards the clerks of county petty sessional divisions, by s. 84 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), which, however, has no application to the clerks of the justices of a borough. See the note to that section, *post*, p. 449.

Provision as to clerks of petty sessions partly paid by salary under 14 & 15 Vict. c. 55, ss. 9, 10, or paid under a special Act.

3. Where at the passing of this Act an order is in force under the principal Act for the payment of any clerk of special or petty sessions or clerk of justices of the peace by salary in lieu of fees, but an order has been made that such clerk should be paid for certain excepted business (other than that of giving copies of depositions) by fees and not by salary, this Act shall, so far as is consistent with the tenour thereof, apply, as regards the fees for the excepted business, in like manner as it applies where an order is not in force for the payment of a clerk by salary in lieu of fees.

Where any such clerk as aforesaid is, in pursuance of any Act of Parliament (other than the principal Act), paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and a recommendation need not be made with respect to such clerk in pursuance of this Act.

Provision as to clerk of petty sessions, &c., paid by salary by arrangement.

4. Where at the passing of this Act any clerk of special or petty sessions or clerk of justices of the peace is by arrangement paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and unless a Secretary of State requires a recommendation to be made with respect to such clerk in pursuance of this Act, such arrangement shall have effect as if it were an order of the Secretary of State under the principal Act, and this Act shall apply accordingly.

Appointment of one salaried clerk only in a petty sessional division.

5. In each petty sessional division there shall after the first day of February one thousand eight hundred and seventy-eight, or any later date at which an order for the payment of a clerk by salary in lieu of fees comes into operation in the division, be only one salaried clerk in the division to perform the duties of clerk of petty sessions, clerk of special sessions, or clerk of any justice or justices of the peace :

Section 5.

Provided that—

(1.) Where special or petty sessions are usually held at more than one place appointed for the purpose in a petty sessional division, there may, if it seem fit, be a separate salaried clerk appointed in respect of each such place; and

(2.) Where a Secretary of State has fixed the amount of the salary for one salaried clerk in a division, and there are, at the passing of this Act, two clerks, each of whom performs the duties of clerk of petty sessions and clerk of special sessions in that division, the local authority may, if they think fit, continue such existing clerks in office, and apportion the salary between those clerks in such manner as they think just; and

(3.) Where any partners have before the passing of this Act jointly performed the duties of clerk of petty sessions or clerk of special sessions, the local authority may, if they think fit, continue such existing clerks in office and pay the salary to such clerks jointly.

(4.) A Secretary of State, on the application of the local authority, may, if he thinks fit, authorise in any case the appointment of more than one salaried clerk.

The salaried clerk (in this Act referred to as a clerk of a petty sessional division) shall be appointed from time to time by the justices acting in and for the petty sessional division in which he is clerk assembled in special sessions, and shall hold his office during the pleasure of those justices.

Where there is a salaried clerk of a petty sessional division, any fees which may be received by a clerk of special sessions, clerk of petty sessions, or clerk of a justice of the peace in that division, shall not be received by such clerk for his own use, but shall be received, paid, and accounted for as directed by section eleven of the principal Act, or by any Act specially relating to such clerk.

Nothing in this section shall apply to, or to the fees of, either a clerk of a metropolitan police court, or a clerk to the justices of a borough, or a clerk to a stipendiary or other magistrate whose salary is regulated under any Act of Parliament other than the principal Act.

In the case of the town and county of Haverfordwest, the justices of the peace for the said town and county in quarter sessions assembled, and not the town council thereof, shall be the local authority to carry out the provisions of the principal Act and this Act, and the salary for the time being payable to the clerk of the justices of the said town and county under their order shall be paid out of the county rate thereof, and all fees received by such clerk after the making of such order shall be paid to the treasurer of the said town and county in aid of the county rate thereof, and shall be accounted for by such treasurer from time to time as the justices so assembled as aforesaid may direct.

Payment to treasurer of county or borough of

6. All penalties, costs, and sums which, in pursuance of a conviction or order by a justice or justices of the peace, are paid to a clerk of a petty sessional division, or a clerk of special sessions, or a clerk of

Section 6.

unclaimed penalties and other sums.

petty sessions, or a clerk of any justice or justices of the peace, and are not actually paid by him to the party or parties by law entitled thereto, other than the treasurer hereinafter mentioned, shall be paid to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices acted, subject nevertheless to be paid by such treasurer to any party showing himself to be by law entitled thereto.

Every such clerk shall account for and pay over all penalties, costs, and sums payable to any such treasurer, under this or any other Act, at such times and in such manner as may be from time to time directed by the justices or council who appointed that treasurer, and if he wilfully omits to account for or pay over any such penalty, costs, or sum, he shall forfeit for every such omission twenty pounds, to be recovered by action of debt by any person who may sue for the same.

As to the application of penalties in a quarter sessions borough and in a borough having no separate court of quarter sessions, see s. 221 of the Municipal Corporations Act, 1882, and the notes thereto, *ante*, p. 148.

Qualification of salaried clerk of petty sessional division and justices of a borough.

7. Every clerk appointed after the passing of this Act to be a salaried clerk of a petty sessional division, or to be clerk to the justices of a borough, shall either—

(1.) Be a barrister of not less than fourteen years standing; or,

(2.) Be a solicitor to the Supreme Court of Judicature; or,

(3.) Have served for not less than seven years as a clerk to a police or stipendiary magistrate, or to a metropolitan police court, or to one of the police courts of the City of London.

Provided that a person who for not less than fourteen years has served as or as assistant to either a clerk of petty sessional division, or a clerk to the justices of a borough, or (in the case of service before the passing of this Act) a clerk of special or petty sessions, or a clerk of a justice or justices of the peace, may be appointed salaried clerk of a petty sessional division, or clerk to the justices of a borough, in any case in which in the opinion of the justices empowered to make the appointment there are special circumstances rendering such appointment desirable; provided also, that no person being clerk of the peace or deputy clerk of the peace for a county or borough, or a partner of such clerk or deputy clerk, shall be salaried clerk of a petty sessional division or clerk to the justices of a borough within such county; but this proviso shall not apply to any clerk of the peace or deputy clerk of the peace, or partner of such clerk or deputy clerk, holding and executing in person at the time of the passing of this Act the office of clerk to the justices of any petty sessional division of a county, or clerk to the justices of a borough.

See also as to disqualifications for the office of clerk to borough justices, s. 159 of the Municipal Corporations Act, 1882, *ante*, p. 118.

Power of local authority and Secretary of State as to table of fees and adjustment of fees

8. Whereas by section thirty of the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," provision is made for the

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in proportion to salary of clerks.
11 & 12 Vict. c. 43.

making of tables of the fees to be paid to the clerks of special and petty sessions, and to the clerks of justices of the peace, and it is expedient to make such further provision as is hereinafter mentioned concerning the same; be it therefore enacted as follows:

The said section thirty is hereby repealed so far as relates to clerks of special and petty sessions and clerks of justices of the peace, without prejudice to anything done in pursuance of that section.

Where it appears to a local authority that the aggregate amount received by the treasurer of that authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary to the clerks of petty sessional divisions, or in the case of a borough to the clerk to the justices of the borough, or that otherwise it is expedient so to do, the local authority may make a table of the court fees which in their opinion should be taken, and shall cause such table, signed by the chairman, mayor, or other presiding officer of the local authority, to be laid before a Secretary of State, and a Secretary of State may, if he think fit, alter such table of fees and settle the same (having due regard to the relation of the aggregate amounts so received and paid as aforesaid), and certify that the fees in the table as settled by him are proper to be taken within the jurisdiction of the said local authority.

Where complaint is made to a Secretary of State that the aggregate amount received by the treasurer of a local authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary as aforesaid, or that for other reasons it is expedient that the table of court fees should be revised, he may, if he think fit, by order, require the local authority to make a return to him within the time specified in the order of the aggregate amount so received and paid during three years previous to the order, or of the table of court fees in force for the time being, as the case may be, and if, on receiving such return, or on the failure of the local authority to make the return, he is, after making such inquiry as he thinks proper, satisfied of the truth of the complaint, he may, by order, require the local authority to make and lay before him, within the time (not being less than four months from the date of the order) specified in the order, a table of court fees in pursuance of this section, and if the local authority fail to comply with the order, he may, in like manner (so nearly as circumstances admit) as if the local authority had laid before him a table of fees in pursuance of this section, settle a table of fees and certify that the fees in that table are proper to be taken within the jurisdiction of the said local authority.

A Secretary of State, upon certifying a table of fees in pursuance of this section, shall cause copies thereof to be sent to the clerk of the local authority to be by him distributed to the clerks of petty sessional divisions and clerks to justices within the jurisdiction of that authority, and if at any time thereafter any of those clerks or any other person wilfully demands or receives any other or greater court fee than such as is set down in the said table, he shall forfeit for every such demand or receipt twenty pounds, to be recovered by action of debt by any person who may sue for the same.

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Until a table is made in pursuance of this section, any of the said clerks may demand and receive such fees as he is at the passing of this Act lawfully authorised to demand and receive.

The expression " court fee " in this section means any fee, gratuity, or sum which may by law be demanded or received in respect of any business or act transacted or done by a clerk of special or petty sessions or a clerk of justices of the peace as such clerk, notwithstanding that by reason of such clerk being paid by salary, or of the provisions of this Act, he cannot receive the same for his own use, and includes fees for the giving of copies of depositions by any clerk mentioned in this section, whether received for his own use or not.

Account of fees by clerk.

9. The account of fees required by section eleven of the principal Act, as amended by this Act, to be rendered by any clerk shall be rendered quarterly, or at any less interval directed by the local authority, and if any clerk wilfully omits from any such account any fee received by him, he shall forfeit for every such omission twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Construction of Act and repeal of part of 14 & 15 Vict. c. 55.

10. This Act shall, so far as is consistent with the tenour thereof, be construed as one with the principal Act; and so much of sections nine and ten of the principal Act as empowers a Secretary of State to direct that a clerk be paid by fees in lieu of salary (either generally or in respect of excepted business) is hereby repealed.

THE PARLIAMENTARY AND MUNICIPAL REGISTRATION ACT, 1878.

(41 & 42 VICT. c. 26.)

An Act to amend the Law relating to the Registration of Voters in Parliamentary Boroughs and the enrolment of Burgesses in Municipal Boroughs, and relating to certain rights of voting and proceedings before and appeals from Revising Barristers. [22nd July, 1878.]

Such parts of this Act as have been repealed or relate only to parliamentary registration have been for the most part omitted. As to the application of the Act to the enrolment of burgesses and county electors, see the note to s. 15, *post*.

Short titles.

1. This Act may be cited as the Parliamentary and Municipal Registration Act, 1878.

The Acts referred to in this Act by short titles may be cited for all purposes by those titles respectively.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definitions.

4. In this Act—

The term "Reform Act, 1832" means the Act of the session of the second and third years of the reign of King William the Fourth, chapter forty-five, "to amend the representation of the people in England and Wales:"

5 & 6 W. 4, c. 76. 40 & 41 Vict. c. 69.

The term "Municipal Corporation Acts" means the Municipal Corporation Act, 1835, and the Acts amending the same:

The term "Parliamentary Registration Act, 1843," means the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen, "to amend the law for the registration of persons entitled to vote, and to define certain rights of voting and to regulate certain proceedings in the election of members to serve in Parliament for England and Wales:"

The term "Parliamentary Registration Acts" means the Parliamentary Registration Act, 1843, and any enactment amending the same or otherwise relating to the registration of Parliamentary electors:

The term "parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places returning a member or members to serve in Parliament, and not being a county at large, or riding, part, or division of a county at large:

The term "municipal borough" means any place for the time being subject to the Municipal Corporation Acts:

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The term "parliamentary voter" means a person entitled to be registered as a voter and when registered to vote at the election of a member or members to serve in Parliament for a parliamentary borough:

The term "burgess" has the same meaning as in the Municipal Corporation Acts:

The term "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

Other terms used in this Act have the same meaning as in the Parliamentary Registration Acts.

The reference to the "Municipal Corporation Acts" is now to be read as referring to the Municipal Corporations Act, 1882. See s. 242 (3) of that Act, *ante*, p. 160.

The provisions of the Parliamentary Registration Act, 1843, which are made applicable by this Act to the registration of burgesses, are set out, *ante*, pp. 217 *et seq.*

As to the meaning of the term "burgess," see s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 6; and as to the definition of "parish," see *Sargent* v. *Rodd*, (1879) 49 L. J. C. P. 195.

Explanation of terms. "House," &c. 2 & 3 W. 4, c. 45, s. 27.

5. In and for the purposes of the Reform Act, 1832, and the Municipal Corporation Acts, the terms "house, warehouse, counting-house, shop, or other building," shall include any part of a house where that part is separately occupied for the purpose of any trade, business, or profession; and any such part may for the purpose of describing the qualification be described as "office," "chambers," "studio," or by any like term applicable to the case.

* * * * *

Separate occupation of part notwithstanding joint occupation of other part.

For the purposes of any of the Acts referred to in this section, where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

* * * * *

So much of this section as relates to the municipal franchise is identical with s. 31 of the Municipal Corporations Act, 1882. See the note to that section, *ante*, p. 45.

6. * * * * *

Period of qualification.

7. In every parliamentary borough and in every municipal borough every period of qualification for parliamentary voters and burgesses respectively which is now computed by reference to the last day of July, shall, instead of being so computed, be computed by reference to the fifteenth day of July.

The term "period of qualification" in this section shall include any period of occupation, residence, possession, receipt of rents and profits, and non-receipt of parochial relief or other alms.

The provision contained in this section is reproduced in s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 6, by which the period of qualification for burgesses is fixed.

Publication of notices and lists in post and telegraph offices, &c.

9. In every parliamentary borough and in every municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, any notice or list which is by

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the Parliamentary Registration Acts or this Act directed to be published by overseers shall be published by them not only in the manner directed by those Acts, but also by being affixed and kept in some public and conspicuous position in or near every post office and telegraph office occupied by or on behalf of Her Majesty's Postmaster General, and in or near every public or municipal or parochial office within the parish to which the list relates.

All the provisions of those Acts with respect to the publication of notices or lists shall apply to the publication to be made under this section.

As to the publication of notices, see 6 & 7 Vict. c. 18, s. 23, *ante*, p. 221.

Notwithstanding this section, no notice or list herein referred to may be affixed in or on any post office or other property belonging to the Postmaster-General without his authority; and where he is of opinion that any such notice or list cannot be so affixed without obstruction or inconvenience to the business of the post office, he may refuse such authority. 47 & 48 Vict. c. 76, s. 5.

Notice of rates in arrear. 6 & 7 Vict. c. 18, s. 11. 30 & 31 Vict. c. 102, s. 28.

10. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, section eleven of the Parliamentary Registration Act, 1843, and section twenty-eight of the Representation of the People Act, 1867, (which relate to the notices to be published and given with respect to rates and taxes in arrear,) shall, as amended by this Act, extend with the necessary modifications to the rates of which the payment is required as a condition of enrolment on the burgess roll, and all the provisions of those sections as so amended shall apply to the overseers of parishes situate wholly or partly in a municipal borough accordingly.

Any notice required to be given under this section shall be deemed to be duly given if delivered to the occupier or left at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable.

30 & 31 Vict. c. 102, s. 28.

In case no such person can be found, then the notice required to be given under this section or under section twenty-eight of the Representation of the People Act, 1867, shall be deemed to be duly given if affixed upon some conspicuous part of the premises.

Any overseer who with intent to keep an occupier off the list or register of voters for a parliamentary borough, or off the burgess lists or burgess roll of a municipal borough, shall wilfully withhold any notice required by this section to be given to such occupier, shall be deemed guilty of a breach of duty in the execution of this Act.

30 & 31 Vict. c. 102, s. 29.

Section twenty-nine of the Representation of the People Act, 1867, shall extend and be applicable to every parish situate wholly or partly within a municipal borough whose burgess lists are revised under this Act.

See s. 11 of the Parliamentary Registration Act, 1843, *ante*, p. 217. Sections 28 and 29 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), are as follows:—

"28. Where any poor rate due on the fifth day of January in any year from an occupier in respect of premises capable of conferring the franchise for a borough remains unpaid on the first day of June following, the overseers whose duty it may be to collect such rate shall, on or before the twentieth of the same month of June, unless such rate has previously been paid, or has been duly demanded by a demand

note, to be served in like manner as the notice in this section referred to, give or cause to be given a notice [*in the form set forth in the Schedule (E) to this Act*] to every such occupier. The notice shall be deemed to be duly given if delivered to the occupier or left at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable. Any overseer who shall wilfully withhold such notice, with intent to keep such occupier off the list or register of voters for the said borough, shall be deemed guilty of a breach of duty in the execution of the Registration Acts.

"29. The overseers of every parish wholly or partly within a borough shall, on or before the twenty-second day of July in every year, make out a list containing the name and place of abode of every person who shall not have paid, on or before the twentieth day of the same month, all poor rates which shall have become payable from him in respect of any premises within the said parish before the fifth day of January then last past, and the overseers shall keep the said list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday during the first fourteen days after the said twenty-second day of July; any overseer wilfully neglecting or refusing to make out such list, or to allow the same to be perused as aforesaid, shall be deemed guilty of a breach of duty in the execution of the Registration Acts."

The first of these sections is made applicable to the occupiers of premises in cases where the owners are liable for the rates by 32 & 33 Vict. c. 41, s. 10, *ante*, p. 252.

The form of notice to be given under s. 28 is now Form C in the Third Schedule to the Registration Order, 1895, *post*, p. 582.

As to the service of notices under this Act, see s. 40, *post*; and as to the liability of overseers to a penalty for breach of duty, see s. 29, *post*.

Registrars to furnish returns of deaths to overseers.

11. Every registrar of births and deaths whose sub-district includes the whole or part of any parliamentary borough or any municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall transmit by post or otherwise to the overseers of every parish the whole or any part of which is included in the parliamentary borough or municipal borough and also in his sub-district, a return certified under his hand to be a true return of the names, ages, and residences of all male persons of full age dying within that parish or part, and also when and as required by those overseers of the names, ages, and residences of all women of full age dying within that parish or part.

The returns shall state the names of all such persons in full (where the names are known) and the dates of their deaths, and the names and residences of the persons by whom information of the deaths was given to the registrar.

The returns shall be made four times a year; that is to say,

On or before the seventh day of April for the three months ending with the preceding thirty-first day of March;

On or before the twenty-second day of July for the period beginning with the preceding first day of April and ending with the fifteenth day of July;

On or before the [*fifteenth*] day of September, or at such other time before the completion of the revision of the lists of the parliamentary borough or municipal borough to the area of which the return relates as the barrister revising the same shall appoint in that behalf for the period beginning with the preceding sixteenth day of July, and ending with the time when such return is made, or as near thereto as practicable;

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And on or before the seventh day of January for the period beginning with the preceding [*fifteenth*] day of September or from the time for which the last preceding return was made, and ending with the thirty-first day of December:

The registrar making any such return shall be entitled to fees at the rate specified in the twenty-eighth section of the Births and Deaths Registration Act, 1874, in respect of the returns therein mentioned, and such fees shall be paid by the overseers as part of the expenses of carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists.

37 & 38 Vict. c. 88, s. 28.

The overseers shall omit from any list made by them the name of any person who appears from such returns to be dead, and shall allow any person who is registered as a parliamentary voter of the parliamentary borough or enrolled as a burgess of the municipal borough to which the returns relate to inspect any such returns in their custody at all reasonable times free of charge.

The eighth day of September is now substituted for the fifteenth day of September in this section by 51 & 52 Vict. c. 10, s. 6, *post*, p. 412.

The registrar making a return is entitled under s. 28 of the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), to a fee of twopence, and to a further fee of twopence for every death entered in the return.

The expenses of the overseers are to be certified by the revising barrister under 6 & 7 Vict. c. 18, s. 57, *ante*, p. 230, and are to be defrayed in the manner provided by s. 30 of this Act, *post*, p. 341.

List of persons disqualified by parochial relief.

12. The overseers of every parish situate wholly or partly either in a parliamentary borough or in a municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall ascertain from the relieving officer acting for that parish the names of all persons who are disqualified for being inserted in the lists of parliamentary voters or burgess lists for that parish by reason of having received parochial relief, and the relieving officer, upon application from the overseers, shall produce to them at such place within the parish, and at such time as is required by them, the books in his possession containing the names of those persons.

Inspection of rate books.

13. In every parish situate wholly or partly either in a parliamentary borough or in a municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, the books containing the poor rates made for the parish within the previous two years shall at all reasonable times be open, free of charge, to the inspection of any person who is registered as a parliamentary voter for the parliamentary borough, or enrolled as a burgess of the municipal borough, and any such voter or burgess may make any copy thereof or take any extract therefrom.

Explanation of 32 & 33 Vict. c. 41, s. 19, as to entering occupier's name in rate book.

14. . . . The recited enactment shall not be deemed to apply exclusively to cases where an agreement has been made under section three of the same Act, or where an order has been made under section four of the same Act, but shall be of general application.

The recited enactment is s. 19 of the Poor Rate Assessment and Collection Act, 1869. See the note to that section, *ante*, p. 254. This section applies to all municipal boroughs, whether parliamentary or not.

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Preparation of lists of parliamentary voters and burgess lists together in certain cases.

15. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the lists of parliamentary voters and the burgess lists shall so far as practicable be made out and revised together.

In every such case the overseers of every parish situate wholly or partly either in the parliamentary borough or in the municipal borough shall, on or before the last day of July in every year, make out a list of all persons entitled under any right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867, to be registered as voters for the parliamentary borough in respect of the occupation of property situate wholly or partly within that parish, or entitled to be enrolled as burgesses of the municipal borough in respect of the occupation of any property so situate.

2 & 3 W. 4, c. 45.
30 & 31 Vict. c. 102, s. 3.

With respect to every list so made out the following provisions shall have effect:

(1.) The lists shall be in substitution for the lists of persons so entitled which are required to be made out under the Parliamentary Registration Acts and the Municipal Corporation Acts:

(2.) Where the parish is situate wholly or partly both in the parliamentary borough and in the municipal borough, the list for the parish shall be made out in three divisions:

Division One shall comprise the names of the persons entitled both to be registered as parliamentary voters under a right conferred as aforesaid and to be enrolled as burgesses;

Division Two shall comprise the names of the persons entitled to be registered as parliamentary voters under a right conferred as aforesaid, but not to be enrolled as burgesses;

Division Three shall comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters under a right conferred as aforesaid:

(3.) Each list shall state the surname and other name or names of every person whose name is inserted therein, his place of abode, the nature of his qualification, and the situation and description of the property in respect of which he is entitled:

(4.) Each list shall be signed and otherwise dealt with in manner directed by the Parliamentary Registration Acts with respect to the alphabetical lists mentioned in section thirteen of the Parliamentary Registration Act, 1843:

6 & 7 Vict. c. 18, s. 13.

(5.) Where no part of the parish is situate within the municipal borough, the list for the parish shall be deemed to be a list of voters for the parliamentary borough:

(6.) Where no part of the parish is situate within the parliamentary borough, the list for the parish shall be deemed to be a burgess list for the municipal borough:

(7.) Where the list is made out in divisions, Divisions One and Two shall be deemed to be lists of voters for the parliamentary borough, and Divisions One and Three shall be deemed to be burgess lists for the municipal borough:

(8.) The lists, and if the lists are made out in divisions, each division

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thereof, shall, if and so far as the local authority from time to time direct, according to convenience for use, be framed in parts for polling districts or wards; and where the polling districts and wards are not conterminous, in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists.

The application of this section has been extended by s. 4 of the County Electors Act, 1888, *post*, p. 410, to the enrolment of burgesses in a non-parliamentary borough and to the registration of county electors. In non-parliamentary boroughs the lists of burgesses were formerly revised by the mayor and revising assessors under s. 44 (2) of the Municipal Corporations Act, 1882, *ante*. The lists of burgesses and of county electors are now in all cases to be made out together and to be revised by the revising barrister with the lists of parliamentary voters.

16. * * * * *

Provision where several municipal boroughs included in one parliamentary borough.

17. In the case of a parliamentary borough which includes in whole or in part more municipal boroughs than one, each such municipal borough shall, for the purposes of this Act, be dealt with separately and as if each were the only municipal borough included in whole or in part in such parliamentary borough, and if any parish is partly in one and partly in another or others of such municipal boroughs, so much thereof as is in any one of such municipal boroughs shall, for the purposes of this Act, be dealt with as a separate parish.

The town clerk of each such municipal borough shall, so far as regards the area of such municipal borough, issue the precepts and perform the other duties to be performed by the town clerk under and shall be the town clerk for the purposes of the Parliamentary Registration Acts and this Act.

Application of Parliamentary Registration Acts to burgess lists made out under this Act.

18. The Municipal Corporation Acts shall not, as to anything prior to the completion of the revision of the burgess lists, apply to any burgess list made out under this Act, and instead thereof the Parliamentary Registration Acts, as modified by this Act, shall, up to the completion of the revision of the burgess lists, apply to every such burgess list, as if it were a list of parliamentary voters made out under those Acts, and as if the municipal borough to which such burgess lists relate were a parliamentary borough; Provided as follows:

(1.) Nothing in this Act shall authorise a person entered on a burgess list, not being also entered on a list of parliamentary voters, to make any objection in respect of a list of parliamentary voters, or authorise any person entered on a list of parliamentary voters, not being also entered on a burgess list, to make any objection in respect of a burgess list.

(2.) The last day for revising a burgess list made out under this Act shall be the twelfth day of October; and

(3.) The burgess lists when revised shall be copied for the burgess roll in manner directed by the Municipal Corporation Acts.

The provisions of the Parliamentary Registration Act, 1843, which are made applicable to the burgess lists by this section, are set out, *ante*, pp. 217 *et seq.*

The lists are to be revised between the 8th of September and the 12th of October, both inclusive. County Electors Act, 1888, s. 6, *post*.

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Lists of persons qualified to be aldermen or councillors, but not to be burgesses.

19. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the separate lists of the persons entitled to be elected councillors or aldermen of the municipal borough, though not entitled to be on the burgess roll, shall be made out at the same time and in the same manner as the burgess lists, and all the provisions of this Act with respect to the burgess lists shall apply to those separate lists.

See s. 11 of the Municipal Corporations Act, 1882, *ante*, p. 19.

Lists and registers may be arranged according to streets.

21. If and so far as the local authority so direct, the lists of parliamentary voters and registers of parliamentary voters in parliamentary boroughs, and the burgess lists and burgess rolls in municipal boroughs, and the lists of claimants and persons objected to in parliamentary boroughs and municipal boroughs respectively, or any of those documents, shall, so far as they relate to persons qualified in respect of the ownership or occupation of property (including persons qualified in respect of lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists, registers, and rolls to record the qualifying premises in successive order in the street or other place in which they are situate, subject in the case of a municipal borough divided into wards to the division of the burgess roll into ward lists. The local authority in this Act means as regards a parliamentary borough the authority having power to divide the parliamentary borough into polling districts, and as regards a municipal borough the council of the municipal borough.

As to the division of the burgess roll into ward lists, see ss. 45 and 46 of the Municipal Corporations Act, 1882, *ante*, p. 55.

22. * * * * *

23. * * * * *

Declaration as to misdescription.

24. Any person who is entered on any list of voters for a parliamentary borough or any burgess list, subject to revision under this Act, for a municipal borough, and whose name or place of abode or the nature of whose qualification or the name or situation of whose qualifying property is not correctly stated in such list, or in respect of whom there is any other error or omission in the said list, may, whether he has received a notice of objection or not, if he thinks fit, make and subscribe a declaration before any justice of the peace or any commissioner or other person authorised to administer oaths in the Supreme Court of Judicature.

The declaration shall be duly dated and shall on or before the [*twelfth*] day of September be sent to the town clerk, who forthwith shall indorse on the declaration a memorandum signed or initialed by him, stating the date when he received it, and naming the declarant, and the list to which the declaration refers, and shall deliver all such declarations to the revising barrister at his first court.

If the declaration is sent as aforesaid in due time (of which the said indorsement shall be *primâ facie* proof), the revising barrister shall

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receive the declaration as evidence of the facts declared to, and that without proof of the signature of the declarant, or of the justice, commissioner, or person before whom the declaration purports to have been subscribed, unless he has good reason to doubt the genuineness of any signature thereto.

The declarations shall be open free of charge to public inspection at the office of the said town clerk, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, before the [*fifteenth*] day of September, and he shall deliver copies thereof on application and payment of the price of fourpence per folio of seventy-two words.

The declaration must now be made in accordance with Form M in the Third Schedule to the Registration Order, 1895, *post*, p. 587. The date for sending in declarations has been altered to the 5th of September, and the last day for inspection to the 8th of September, by 51 & 52 Vict. c. 10, s. 6, *post*, p. 412.

As to the power to correct a misdescription of the nature of the voter's qualification, see *Goodrich* v. *Great Grimsby* (*Town Clerk*), [1902] 1 K. B. 301; 71 L. J. K. B. 99; 85 L. T. 583; 50 W. R. 170; 65 J. P. 758; 1 Smith, 273; 18 T. L. R. 34.

The fact that a person whose name has been incorrectly stated has not availed himself of the right to make a declaration under this section does not deprive the revising barrister of the power to correct the mistake under s. 28 (1), *post*. See note (*a*) to that section.

Penalty for false declaration.

25. If any person falsely or fraudulently signs any such declaration as last aforesaid, or any declaration either as claimant or witness in respect of a claim to vote as a lodger in the name of any other person, whether that person is living or dead, or in a fictitious name, or sends as genuine any false or falsified declaration knowing the same to be false or falsified, or knowingly and wilfully makes any false statement of fact in any declaration of the nature aforesaid, he shall be guilty of a misdemeanor and punishable by fine or by imprisonment for a term not exceeding one year, and the revising barrister shall have power to impound the declaration.

Notice of objection to state specific grounds of objection, &c. 6 & 7 Vict. c. 18, ss. 17, 20. 28 & 29 Vict. c. 36, ss. 7, 8.

26. The notice required by the seventeenth and twentieth sections of the Parliamentary Registration Act, 1843, to be given to persons objected to in boroughs for the purposes of the revision of the lists of voters for a parliamentary borough and the burgess lists for a municipal borough whose burgess lists are revised under this Act, shall state specifically the ground or grounds of objection, and sections seven and eight of the County Voters Registration Act, 1865, shall extend to such objections.

See s. 17 of the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), *ante*, p. 220. Section 20 of that Act relates only to voters in the City of London. Sections 7 and 8 of the County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), are as follows:—

"7. No person objected to under the provisions of this Act shall be required to give evidence before the revising barrister in support of his right to be registered, otherwise than as such right shall be called in question in such ground or grounds of objection.

"8. Every separate ground of objection shall be treated by the revising barrister as a separate objection; and for every ground of objection which in the opinion of the revising barrister shall have been groundlessly or frivolously and vexatiously stated in a notice of objection, he shall on the application of the person objected to

or any one on his behalf, and upon production of the notice of objection, award costs against the objector to the amount at least of two shillings and sixpence, and this though the name of the person objected to be expunged upon some other ground of objection stated in the same notice of objection." Section 26.

27. For the purposes of the revision of the lists of voters for a parliamentary borough, and the burgess lists for a municipal borough whose burgess lists are revised under this Act— Revision of lists of voters.

(1.) An objection may be withdrawn by a notice to that effect in writing, signed by the objector, and given to the person objected to and to the town clerk not less than seven days before the day which shall be appointed for the holding of the first court of revision of the list to which the objection relates: Objections may be withdrawn.

(2.) Any objection by a qualified objector may, after his death, be revived by any other person qualified to have made the objection originally by a notice to that effect in writing signed by him and given to the person objected to and to the town clerk at or before the time of the revision of the entry to which the objection relates: Reviver of objections on death of objector.

A person reviving an objection shall be deemed to have made the objection originally, and he shall be responsible in respect thereof, and the proceedings thereon shall be continued accordingly:

(3.) Where objection is made otherwise than by an overseer to any person whose name appears on a list of voters or burgesses and the name is retained on the list, the revising barrister shall, unless he is of opinion that the objection was reasonably made either because of a defect or error in the entry to which the objection relates, or because of a difficulty in verifying or identifying the particulars comprised in such entry, or unless the objection is duly withdrawn, or unless for some other special reason he otherwise determines, order costs not exceeding forty shillings to be paid by the objector to the person objected to. Costs of objections.

As to notices of objection, see 6 & 7 Vict. c. 18, s. 17, *ante*, p. 220. For the form of notice of withdrawal, see Form N in the Third Schedule to the Registration Order, 1895, *post*, p. 588.

28. A revising barrister shall, with respect to the lists of voters for a parliamentary borough and the burgess lists for a municipal borough which he is appointed to revise, perform the duties and have the powers following: Duties and powers of revising barrister.

(1.) He shall correct any mistake which is proved to him to have been made in any list (*a*):

(2.) He may correct any mistake which is proved to him to have been made in any claim or notice of objection (*b*):

(3.) He shall expunge the name of every person, whether objected to or not, whose qualification as stated in any list is insufficient in law to entitle such person to be included therein:

(4.) He shall expunge the name of every person who, whether objected to or not, is proved to the revising barrister to be dead:

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(5.) Where an entry in any list and an entry in a return made to the overseers of deaths appear to relate to the same person, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that the entries relate to the same person shall expunge the entry in the list therefrom (*c*) :

(6.) The revising barrister shall expunge the name of every person, whether objected to or not, whose name or place of abode, or the nature of whose qualification, or the name or situation of whose qualifying property if the qualification is in respect of property, or any other particulars respecting whom by law required to be stated in the list, is or are either wholly omitted or in the judgment of the revising barrister insufficiently described for the purpose of being identified, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of the revising barrister before he shall have completed the revision of the list in which the omission or insufficient description occurs, and in case such matter or matters shall be so supplied, he shall then and there insert the same in such list :

(7.) He shall expunge the name of every person, whether objected to or not, where it is proved to the revising barrister that such person was, on the last day of July then next preceding, incapacitated by any law or statute from voting at an election for the parliamentary borough or an election for the municipal borough, as the case may be, to which the list relates (*d*) :

(8.) Before expunging from a list the name of any person not objected to, the revising barrister shall cause such notice, if any, as shall appear to him necessary or proper under the circumstances of the proposal to expunge the name, to be given to or left at the usual or last known place of abode of such person :

(9.) Subject as herein and otherwise by law provided, the revising barrister shall retain the name of every person not objected to, and also of every person objected to, unless the objector appears by himself or by some person on his behalf in support of his objection (*e*) :

(10.) If the objector so appears the revising barrister shall require him, unless he is an overseer, to prove that he gave the notice or notices of objection required by law to be given by him, and to give *primâ facie* proof of the ground of objection, and for that purpose may himself examine and allow the objector to examine the overseers or any other person on oath touching the alleged ground of objection, and unless such proof is given to his satisfaction shall, subject as herein and otherwise by law provided, retain the name of the person objected to.

An objection made under this Act by overseers shall be deemed to cast upon the person objected to the burden of proving his right to be on the list :

The *primâ facie* proof shall be deemed to be given by the objector if it is shown to the satisfaction of the revising barrister

by evidence, repute, or otherwise that there is reasonable ground for believing that the objection is well founded, and that by reason of the person objected to not being present for examination, or for some other reason, the objector is prevented from discovering or proving the truth respecting the entry objected to (*f*):

(11.) If such proof is given by the objector as herein prescribed, or if the objection is by overseers, then unless the person objected to appears by himself or by some person on his behalf, and proves that he was entitled on the last day of July then next preceding to have his name inserted in the list in respect of the qualification described in such list, the revising barrister shall expunge the name of the person objected to (*g*):

(12.) Where the matter stated in a list or claim, or proved to the revising barrister in relation to any alleged right to be on any list, is in the judgment of the revising barrister insufficient in law to constitute a qualification of the nature or description stated or claimed, but sufficient in law to constitute a qualification of some other nature or description, the revising barrister, if the name is entered in a list for which such true qualification in law is appropriate, shall correct such entry by inserting such qualification accordingly, and in any other case shall insert the name with such qualification in the appropriate list, and shall expunge it from the other list, if any, in which it is entered:

(13.) Except as herein provided, and whether any person is objected to or not, no evidence shall be given of any other qualification than that which is described in the list or claim, as the case may be, nor shall the revising barrister be at liberty to change the description of the qualification as it appears in the list except for the purpose of more clearly and accurately defining the same (*h*):

(14.) Where the name of any person appears to be entered more than once as a parliamentary voter on the lists of voters for the same parliamentary borough, or more than once as a burgess on the burgess lists for the same municipal borough, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that such entries relate to the same person shall retain one of the entries for voting, and place against the other or others a note to the effect that the person is not entitled to vote in respect of the qualification therein contained for the parliamentary borough or for the municipal borough, as the case may be, he being on the list for voting in respect of another qualification:

Any such person may, by notice in writing delivered to the revising barrister at the opening of his first revision court, select the entry to be retained for voting, and in making such selection may select one entry to be retained for voting for the parliamentary borough, and another entry to be retained for voting as a burgess for the municipal borough, but if he does

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not make any selection the entry to be so retained shall be selected by the revising barrister, except in the case of freemen, in which case the entry to be retained by the revising barrister for voting shall be that on the freemen's list (*i*) :

If any question on appeal, or otherwise, arise as to the validity of the qualification for which the parliamentary voter or burgess is on the list for voting, recourse may be had for supporting the right of the voter or burgess to be on the parliamentary register or burgess roll for voting to any other qualification of such person appearing on the register or burgess roll :

Provided always, that in the case of a municipal borough divided into wards a vote given in or the right to vote in one ward shall not be supported by a qualification appearing on the burgess roll for some other ward :

(15.) Where a list is made out in divisions the revising barrister shall place the name of any person in the division in which it should appear according to the result of the revision, regard being had to the title of the person to be on the list both as a parliamentary voter and as a burgess, or only in one of those capacities, and shall expunge the name from the other division (if any) in which it appears (*k*).

This section shall, as regards every parliamentary borough and every municipal borough whose burgess lists are revised under this Act, take effect instead of section forty of the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18, s. 40.

(*a*) The power of correcting mistakes is limited by sub-s. (13), which prevents the revising barrister from altering the description of a voter's qualification except in certain specified cases. See the note to sub-s. (13), *post*.

Where the name of a voter who was objected to was wrongly stated in the list, his second Christian name being omitted, and there was no dispute as to the person referred to, it was held that the revising barrister ought to have corrected the mistake, although the voter had not availed himself of the right to make a declaration under s. 24, *ante*. *Green* v. *Wanklyn*, [1906] 1 K. B. 394 ; 75 L. J. K. B. 216 ; 93 L. T. 770 ; 54 W. R. 197 ; 70 J. P. 19 ; 1 Smith, 411 ; 4 L. G. R. 80 ; 22 T. L. R. 31.

(*b*) This sub-section, unlike sub-s. (1), is permissive only. Where in a notice of objection the objector stated as his place of abode the address at which he carried on his business but did not reside, it was held that this was a mistake which could be corrected, although it arose from a mistaken view of the law. *Prescott* v. *Lee*, [1899] 2 Q. B. 273 ; 68 L. J. Q. B. 906 ; 79 L. T. 447 ; 47 W. R. 690 ; 1 Smith, 197 ; 15 T. L. R. 467.

(*c*) As to the returns of deaths to be made to the overseers, see s. 11, *ante*.

(*d*) It is to be noticed that the date fixed by this sub-section is the last day of July, although the period of qualification is required by s. 7, *ante*, to be computed with reference to the 15th of July.

The incapacity here referred to is an inherent incapacity, such as that of a peer or a married woman ; the sub-section does not refer to a mere temporary disqualification caused by the receipt of parochial relief. *Hayward* v. *Scott*, (1879) 5 C. P. D. 231 ; 49 L. J. C. P. 167 ; 41 L. T. 476 ; 28 W. R. 988 ; Colt. 76.

(*e*) The requirement that the objector must appear in support of his objection applies, whether the objection is made by an overseer or by any other person. *Cartwright* v. *Shrewsbury* (*Town Clerk*), [1909] 2 K. B. 169 ; 78 L. J. K. B. 609 ; 100 L. T. 703 ; 73 J. P. 310 ; 2 Smith, 163 ; 7 L. G. R. 559 ; 25 T. L. R. 421.

(*f*) As to the power of the revising barrister to refuse to hear evidence after the lists have been declared closed, see *Reg.* v. *Soden*, [1896] 1 Q. B. 634 ; 65 L. J. Q. B. 501 ; 74 L. T. 520 ; 44 W. R. 449 ; 60 J. P. 390 ; 1 Smith, 77 ; 12 T. L. R. 382 ;

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Reg. v. *Soden*, [1897] 1 Q. B. 188; 66 L. J. Q. B. 183; 76 L. T. 161; 45 W. R. 234; 61 J. P. 150; 1 Smith, 115; 13 T. L. R. 128.

(*g*) See note (*d*), *supra*. As to what is sufficient evidence to rebut the *primâ facie* proof, see *Douglas* v. *Smith*, [1907] 2 K. B. 568; 76 L. J. K. B. 969; 96 L. T. 826; 71 J. P. 433; 2 Smith, 12; 5 L. G. R. 1004; 23 T. L. R. 612.

Evidence of repute is admissible in the circumstances mentioned in sub-s. (10) as *primâ facie* proof of the ground of objection, but it is not admissible under this sub-section in order to defeat the objection. *Kent* v. *Fittall* (*No.* 2), [1908] 2 K. B. 933; 77 L. J. K. B. 1065; 99 L. T. 761; 72 J. P. 421; 2 Smith 63; 6 L. G. R. 1047; 24 T. L. R. 830.

A revising barrister is not entitled to act upon statements which are not admissible according to the laws of evidence except in cases where this is expressly authorised by the Act. *Storey* v. *Bermondsey Town Clerk*, [1910] 1 K. B. 203; 79 L. J. K. B. 349; 102 L. T. 52; 74 J. P. 94; 26 T. L. R. 190.

Where an objection is made on the ground of want of occupation of the qualifying premises, and *primâ facie* proof of the ground of objection has been given, it is the duty of the revising barrister to inquire into the circumstances of the occupation in the particular case before him, and he is not entitled to act upon general evidence with regard to the majority of houses similarly occupied in the borough. *Kent* v. *Fittall* (*No.* 3), [1909] 1 K. B. 215; 78 L. J. K. B. 110; 99 L. T. 776; 73 J. P. 33; 2 Smith 93; 7 L. G. R. 37; 25 T. L. R. 41.

(*h*) The effect of this sub-section is to preclude the revising barrister from correcting a mistake in an entry relating to qualification unless the case can be dealt with under sub-s. (12), or a declaration as to misdescription has been made under s. 24. *Foskett* v. *Kaufman*, (1885) 16 Q. B. D. 279; 55 L. J. Q. B. 1; 54 L. T. 64; 34 W. R. 90; Colt. 466; 2 T. L. R. 45; *Hurcum* v. *Hilleary*, [1894] 1 Q. B. 579; 63 L. J. Q. B. 306; 70 L. T. 505; 42 W. R. 321; 58 J. P. 510; Fox & Smith, 345; 10 T. L. R. 258. But the revising barrister has power to amend the description of the qualifying property as distinguished from the qualification. *Kitchen* v. *Johnson*, [1899] 1 Q. B. 95; 68 L. J. Q. B. 11; 79 L. T. 422; 47 W. R. 110; 63 J. P. 20; 1 Smith 171; 15 T. L. R. 35.

(*i*) No right of selection exists where the voter's name appears only once on the lists of voters, although it also appears on the list of claims. *Jones* v. *Munro*, [1899] 1 Q. B. 109; 68 L. J. Q. B. 28; 79 L. T. 500; 47 W. R. 109; 1 Smith, 151.

(*k*) As to making out the lists in divisions, see s. 15, *ante*, and *Greenway* v. *Bachelor*, (1883) 12 Q. B. D. 376; 53 L. J. Q. B. 179; 50 L. T. 270; 32 W. R. 319; 47 J. P. 792; Colt. 322.

Power to fine overseers for neglect of duty. 6 & 7 Vict. c. 18, s. 51.

29. The provisions of the fifty-first section of the Parliamentary Registration Act, 1843, relating to the power of the revising barrister to fine overseers for neglect of duty, shall extend to every wilful refusal, neglect, or breach of duty, on the part of overseers in the execution of this Act.

See 6 & 7 Vict. c. 18, s. 51, *ante*, p. 228.

Expenses and receipts.

30 & 31 Vict. c. 102, s. 31.

30. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the expenses properly incurred by the town clerk (including in his expenses the matters mentioned in section thirty-one of the Representation of the People Act, 1867), and the expenses properly incurred by the overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists, and all moneys received in respect of any of those lists, or in respect of any fine imposed by the revising barrister on the revision of the lists, shall be respectively paid and applied as follows:

(1.) If the area of the parliamentary borough and the area of the municipal borough are co-extensive, one-half of the expenses shall be defrayed in the manner provided by the Parliamentary

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Registration Acts as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund, and one-half of the moneys received as aforesaid shall be applied in the manner directed in those Acts, and the other half shall be paid to the borough fund :

(2.) In all other cases the expenses and receipts in respect of the area common to the parliamentary borough and to a municipal borough shall, as to one-half thereof, be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts, and shall as to the other half thereof be defrayed out of and paid to the borough fund of such municipal borough :

And the expenses and receipts in respect of an area exclusively parliamentary shall be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts :

And the expenses and receipts of an area exclusively municipal shall be defrayed out of and paid to the borough fund of the municipal borough comprising such area :

Any expenses and receipts incurred or arising in respect of more than one such area shall be apportioned between the several areas in respect of which they are incurred or arise, in the proportion as nearly as may be in which the same are incurred and arise in respect of the several areas, regard being had to the number of parliamentary voters or burgesses in each area, or any other circumstances occasioning the expenses or giving rise to the receipts :

The revising barrister shall, as part of the business of the revision, determine, if necessary, in respect of what area or areas any expenses or receipts are incurred or arise, and how much thereof is attributable to each area.

The remuneration of the revising barrister shall be paid as heretofore under the Parliamentary Registration Acts : Provided always, that in the case of a municipal borough whose burgess lists are revised under this Act, there shall be paid out of the borough fund to the revising barrister, by way of additional remuneration in respect of his additional work on account of the municipal revision for such municipal borough, a remuneration at the rate mentioned in the third section of the Municipal Corporation Act, 1859.

22 Vict. c. 35, s. 3.

Section 31 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), is as follows :—

"31. The word 'expenses' contained in the sections fifty-four and fifty-five of the said Registration Act of the session of the sixth year of the reign of Her present Majesty, chapter eighteen, shall be deemed to and shall include and apply to all proper and reasonable fees and charges of any clerk of the peace of any county, or of any town clerk of any city or borough, to be hereafter made or charged by him in any year for his trouble, care, and attention in the performance of the services and duties imposed upon him by the same Act or by this Act, in addition to any money actually paid or disbursed by him for or in respect of any such services or duties as aforesaid."

The provisions of the Parliamentary Registration Acts relating to expenses and receipts will be found in 6 & 7 Vict. c. 18, ss. 52 and 55, *ante*, pp. 229, 230.

The remuneration of a revising barrister has now been fixed by s. 9 of the County

Electors Act, 1888, *post*, at two hundred and fifty guineas, payable partly out of money provided by Parliament and partly by the county council. Section 30.

As to the application of the provisions relating to revising barristers in the county of London, see s. 76 (4) of the Local Government Act, 1888.

Where a parish is situate in a parliamentary but not in a municipal borough, one-half of the expenses and receipts under the Registration Acts in respect of such parish are to be defrayed out of and paid to the county fund and the other half out of and to the poor rate. Registration of Electors Act, 1891 (54 & 55 Vict. c. 18), s. 2.

As to expenses in connection with the registration of county electors, see s. 8 of the County Electors Act, 1888, *post*.

Delivery and custody of revised lists.

31. The lists, if made out in divisions under this Act, shall when revised be delivered to the town clerk to whom in respect of the area to which the lists relate revised parliamentary lists ought to be delivered.

The revising barrister shall as part of the business of the revision, at the request of the town clerk of any municipal borough the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough, sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough.

Every such duplicate shall be prepared by the town clerk at whose request it is so signed, and shall be kept by him for use for municipal purposes.

The duplicate is to have the same effect as the original list. See s. 45 (7) of the Municipal Corporations Act, 1882, *ante*, p. 55.

32. * * * * *

Commencement and duration of burgess roll.

33. The burgess roll made up from revised lists under this Act of burgesses for any municipal borough shall come into operation on the first day of November next after the revision, and shall continue in operation for the year commencing with such first day of November.

Appeal and correction of burgess roll where burgess lists are revised under this Act.

35. Where burgess lists are revised under this Act, the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on the revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register in pursuance of any judgment or order of the court of appeal shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of Parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him.

The provisions of the Parliamentary Registration Acts relating to appeals will be found in 6 & 7 Vict. c. 18, ss. 42—45 and 60—70, *ante*, pp. 225, 231. The provisions relating to the alteration of the register are contained in s. 67 of that Act, *ante*, p. 232. Further provisions relating to appeals are contained in ss. 37 and 38 of this Act, *infra*.

By s. 14 of the Judicature Act, 1881 (44 & 45 Vict. c. 68), the decision of the High Court on such appeals is final, unless special leave to appeal to the Court of Appeal is given by the High Court.

Power for revising barrister

36. A revising barrister may by summons under his hand require any person to attend at the court and give evidence or produce documents

Section 36. to summon witnesses.

for the purpose of the revision, and any person who after the tender to him of a reasonable amount for his expenses fails so to attend, or who fails to answer any question put to him by the revising barrister in pursuance of this section, or to produce any document which he is required in pursuance of this section to produce, shall be liable to pay such fine not exceeding five pounds as may be imposed by the revising barrister, and such fine may be recovered, and when recovered shall be applied in like manner as any other fine imposed by the revising barrister under the Parliamentary Registration Acts.

As to the application of such fines, see s. 30, *ante*.

Appeal where revising barrister neglects or refuses to state case.

37. If any person feels aggrieved by a revising barrister neglecting or refusing to state any case, he may, within one month after such neglect or refusal, apply to the High Court of Justice upon affidavit of the facts for a rule calling on the revising barrister, and also on the person, if any, in whose favour the decision from which the applicant desires to appeal was given, to show cause why a rule should not be made directing the appeal to be entertained and the case to be stated, and thereupon the High Court, or any judge thereof in chambers, may make such rule to show cause, and make the same absolute, or discharge it with or without payment of costs as seems just, and the revising barrister on being served with any such rule absolute shall state the case accordingly, and the case shall be stated and the appeal entertained and heard, notwithstanding any limitations of time or place contained in the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18.

A revising barrister can only be required to state a case on a question of law. See *R.* v. *Bell*, (1908) 71 J. P. 542; 24 T. L. R. 66, 266.

As to the time for hearing an appeal from a revising barrister, see the note to s. 60 of the Parliamentary Voters Registration Act, 1843, *ante*.

Costs of appeal.

38. The costs of an appellant against a decision of a revising barrister may, if the appeal is successful, be ordered by the court hearing the appeal to be paid by the clerk of the peace or town clerk named as respondent in the said appeal, whether he shall or shall not appear before the said court in support of the decision.

For enabling an appellant to obtain such an order he may at or before the time of making his declaration of appeal under section forty-two of the Parliamentary Registration Act, 1843, require the revising barrister to name the clerk of the peace for the county or the town clerk for the parliamentary borough or municipal borough, as the case may be, to which the appeal relates to be respondent in the appeal.

6 & 7 Vict. c. 18, s. 42.

The revising barrister if so required shall, and in any case may, name such clerk of the peace or town clerk, as the case may be, to be respondent in an appeal, either alone or in addition to any other person referred to in section forty-three of the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18, s. 43.

The expenses properly incurred by a clerk of the peace or town clerk as respondent, including any costs which he may be ordered to pay to the appellant in any such appeal, shall be allowed to him as part of the expenses incurred by him in respect of the revision of the

Section 38.

list to which the appeal relates. The term " expenses " in this section shall include all matters mentioned in section thirty-one of the Representation of the People Act, 1867.

30 & 31 Vict. c. 102, s. 31.

The costs of an appeal against a decision of a revising barrister shall be in the discretion of the court hearing the appeal, subject, except as aforesaid, to the proviso contained in section seventy of the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18, s. 70.

See 6 & 7 Vict. c. 18, ss. 43 and 70, *ante*, pp. 226, 233.

Section 31 of the Representation of the People Act, 1867, is set out in the note to s. 30 of this Act, *ante*, p. 342.

The clerk of the county council is now substituted for the clerk of the peace by 51 & 52 Vict. c. 10, s. 14, and 51 & 52 Vict. c. 41, s. 83.

Power to make rules for proceedings at revision courts.

39. The authority having power to make rules for regulating the practice and procedure in Her Majesty's High Court of Justice may from time to time make, and when made alter and annul, rules for regulating the practice and procedure in the courts of revising barristers for the purposes of the Parliamentary Registration Acts and of this Act.

Rules to be laid before Parliament.

All rules made under this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, and if not, within forty days after the beginning of the then next sitting of Parliament, and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days on which the said House shall have sat praying that any such rule be annulled, Her Majesty may by Order in Council annul the same, and any rule so annulled shall thenceforth be of no effect, but without prejudice to the validity of any proceedings in the meantime taken thereunder.

All such rules shall while in force have effect as if enacted in this Act.

No rules have been made under this section.

Service of notices. 6 & 7 Vict. c. 18, s. 101.

40. The provisions of section one hundred and one of the Parliamentary Electors Registration Act, 1843, as to the service of notices shall apply to the service of notices under this Act.

The term " notice " in the Parliamentary Registration Acts and this Act shall include any document required to be sent or delivered.

See 6 & 7 Vict. c. 18, s 101, *ante*, p. 235.

43. * * * * *

THE WEIGHTS AND MEASURES ACT, 1878.

(41 & 42 VICT. c. 49.)

An Act to consolidate the Law relating to Weights and Measures.

[8th August, 1878.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The greater part of this Act is omitted as being foreign to the purposes of this work. The portions retained relate to the powers and duties of the councils of municipal boroughs in appointing inspectors, making byelaws, &c.

See also the following Acts relating to weights and measures: 52 & 53 Vict. c. 21, *post*, p. 469; 55 & 56 Vict. c. 18, *post*, p. 516; 56 & 57 Vict. c. 19, *post*, p. 535; 4 Edw. 7, c. 28, *post*, p. 636.

Preliminary.

Short title.

1. This Act may be cited as the Weights and Measures Act, 1878.

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II.—ADMINISTRATION.

* * * * *

(b) *Local Administration.*

Local Standards.

Provision of local standards by local authority.

40. The local authority (mentioned in the Fourth Schedule to this Act) of every county and borough from time to time shall provide such local standards of measure and weight as they deem requisite for the purpose of the comparison by way of verification or inspection, in accordance with this Act, of all weights and measures in use in their county or borough, and shall fix the places at which such standards are to be deposited.

The said local authority shall also provide from time to time proper means for verifying weights and measures by comparison with the local standards of such authority and for stamping the weights and measures so verified.

Periodical verification of local standards.

41. A local standard of weight shall not be deemed legal nor be used for the purposes of this Act unless it has been verified or re-verified within five years before the time at which it is used.

A local standard of measure shall not be deemed legal nor be used for the purposes of this Act unless it has been verified or re-verified within ten years before the time at which it is used.

Section 41.

A local standard of weight or measure which has become defective in consequence of any wear or accident, or has been mended, shall not be legal nor be used for the purpose of this Act until it has been re-verified by the Board of Trade.

A local standard may, save as aforesaid, be re-verified, for the purpose of this section, by such local comparison thereof as is hereinafter mentioned, if on that local comparison it is found correct, but otherwise shall be, and in any case may be, re-verified by the Board of Trade.

A local comparison of a local standard shall be made by an inspector of weights and measures for the county or borough in which such standard is used comparing the same, in the presence of a justice of the peace, with some other local standard which has been verified or re-verified by the Board of Trade, in the case of a weight within the previous five years, and in the case of a measure within the previous ten years.

Upon a local comparison where the local standard is found correct the justice shall sign an indorsement upon the indenture of verification of that standard, stating such local comparison and verification, and the error, if any, found thereon, and the indorsement so signed shall be transmitted to the Board of Trade to be recorded in the account of the verification of local standards. The indorsement when so recorded shall be evidence of the local comparison and verification, and a statement of the record thereof, if purporting to be signed by an officer of the Board of Trade, shall be evidence of the same having been so recorded.

It shall be lawful for Her Majesty from time to time, by Order in Council, to define the amount of error to be tolerated in local standards when verified or re-verified by the Board of Trade, or when re-verified by such a local comparison as is authorised by this section.

Production of local standards.

42. The local standards shall be produced by the person having the custody thereof, upon reasonable notice, at such reasonable time and place within the county, borough, or place for which the same have been provided, as any person by writing under his hand requires upon payment by the person requiring such production of the reasonable charges of producing the same.

Local Verification and Inspection of Weights and Measures.

Appointment of inspectors of weights and measures.

43. Every local authority shall from time to time appoint a sufficient number of inspectors of weights and measures for safely keeping the local standards provided by such authority, and for the discharge of the other duties of inspectors under this Act; [*and where they appoint more than one such inspector, shall allot to each inspector* (*subject to any arrangement made for a chief inspector or inspectors*) *a separate district, to be distinguished by some name, number, or mark;*] and the local authority may suspend or dismiss any inspector appointed by them or appoint additional inspectors, as occasion may require, and shall assign reasonable remuneration to each inspector for his duties.

A local authority may, if they think fit, appoint different persons to

Section 43.

be inspectors for verification and for inspection respectively of weights and measures under this Act.

[*A maker or seller of weights or measures, or a person employed in the making or selling thereof, shall not be an inspector of weights and measures under this Act.*]

An inspector of weights and measures shall forthwith on his appointment enter into a recognizance to the Crown (to be sued for in any court of record) in the sum of two hundred pounds for the due performance of the duties of his office, and for the due payment, at the times fixed by the local authority appointing him, of all fees received by him under this Act, and for the safety of the local standards and the stamps and appliances for verification committed to his charge, and for their due surrender immediately on his removal or other cessation from office to the person appointed by the local authority to receive them.

The requirement that a separate district is to be allotted to each inspector has been repealed by s. 5 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28).

The provision as to a maker or seller of weights or measures has been repealed by s. 36 of the Weights and Measures Act, 1889, and is replaced by s. 12 of that Act, *post*, p. 471.

An inspector of weights and measures is now required to hold a Board of Trade certificate by s. 8 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28).

Verification and stamping by inspectors of weights and measures.

44. The local authority shall from time to time fix the times and places within their jurisdiction at which each inspector appointed by them is to attend for the purpose of the verification of weights and measures; and the inspector shall attend, with the local standards in his custody, at each time and place fixed, and shall examine every measure or weight which is of the same denomination as one of such standards and is brought to him for the purpose of verification, and compare the same with that standard, and if he find the same correct shall stamp it with a stamp of verification in such manner as best to prevent fraud; and in the case of a measure or of a weight of a quarter of a pound or upwards, shall further stamp thereon a name, number, or mark distinguishing the district for which he acts.

He shall also enter in a book kept by him minutes of every such verification, and give, if required, a certificate under his hand of every such stamping.

An inspector appointed by the local authority for a county may enter a place within the district of an inspector appointed by any other local authority, and there verify and stamp the weights and measures of any person residing within his own district, but if he knowingly stamp a weight or measure of any person residing in the district of an inspector legally appointed by another local authority, he shall be liable to a fine not exceeding twenty shillings for every weight or measure which he so stamps.

A local authority are not precluded from taking proceedings against a person for using a measure which is not stamped in the manner required by s. 29 of this Act, by reason of their having failed to fix the times and places for the verification and stamping of weights and measures as required by this section. *Hayley* v. *Taylor*, (1900) 82 L. T. 803; 19 Cox C. C. 538.

The provisions of this section are to apply to the verification and stamping in

accordance with the Board of Trade regulations of weighing instruments used for trade in like manner as they apply to the verification and stamping of weights and measures, and for the purposes of those provisions as so amended, any person having his principal place of business within any district is to be deemed to reside in that district, although he in fact is not resident there. Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 12.

* * * * *

Power to inspect measures, weights, scales, &c., and to enter shops, &c., for that purpose.

48. Every inspector under this Act authorised in writing under the hand of a justice of the peace, also every justice of the peace, may at all reasonable times inspect all weights measures scales balances steelyards and weighing machines within his jurisdiction which are used or in the possession of any person or on any premises for use for trade, and may compare every such weight and measure with some local standard, and may seize and detain any weight measure scale balance or steelyard which is liable to be forfeited in pursuance of this Act, and may for the purpose of such inspection enter any place, whether a building or in the open air, whether open or enclosed, where he has reasonable cause to believe that there is any weight measure scale balance steelyard or weighing machine which he is authorised by this Act to inspect.

Any person who neglects or refuses to produce for such inspection all weights measures scales balances steelyards and weighing machines in his possession or on his premises, or refuses to permit the justice or inspector to examine the same or any of them, or obstructs the entry of the justice or inspector under this section, or otherwise obstructs or hinders a justice or inspector acting under this section, shall be liable to a fine not exceeding five, or, in the case of a second offence, ten pounds.

An inspector of weights and measures may, with the consent of the local authority, prosecute before a court of summary jurisdiction or justices any information, complaint, or proceeding arising under the Weights and Measures Acts, or in the discharge of his duties as such inspector. Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 14. It is not necessary that a special consent should be given under this section for every proceeding. *Tyler* v. *Ferris*, [1906] 1 K. B. 94; 75 L. J. K. B. 142; 93 L. T. 843; 54 W. R. 469; 70 J. P. 88; 21 Cox C. C. 73; 4 L. G. R. 201; 22 T. L. R. 181.

Penalty on inspector for misconduct.

49. If an inspector under this Act stamps a weight or measure in contravention of any provision of this Act, or without duly verifying the same by comparison with a local standard, or is guilty of a breach of any duty imposed on him by this Act, or otherwise misconducts himself in the execution of his office, he shall be liable to a fine not exceeding five pounds for each offence.

As to what amounts to misconduct within the meaning of this section, see *Wedderburn* v. *Smith*, (1905) 92 L. T 853; 69 J. P. 217; 20 Cox C. C. 855; 3 L. G. R. 533.

An inspector who refuses or wilfully neglects to act in compliance with the Board of Trade regulations (see the note to s. 53, *post*), is guilty of an offence under this section. Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 5 (4).

Local Authorities.

Local authorities and local rate.

50. For the purposes of this Act "the local authority" and "the local rate" shall mean in each of the different areas mentioned in

Section 50. the first column of the Fourth Schedule to this Act the authority and the rate or fund mentioned in that schedule in connexion with that area :

Provided that in England the council of a borough which has not a separate court of quarter sessions shall not, unless they so resolve, be the local authority for the purposes of this Act, and if they so resolve and provide local standards and appoint inspectors after the commencement of this Act, they shall forthwith give notice of such resolution and appointment, under the corporate seal of the borough, to the clerk of the peace of the county in which the borough is situate, and after the expiration of one month from the day on which that notice of the said appointment is given the powers of inspectors of weights and measures appointed by the justices of the county shall, as to such borough and the weights and measures of persons residing therein, cease ; but until such notice is given the borough shall be deemed to form part of the said county in like manner as if the same were not a borough.

Where at the commencement of this Act legal local standards are provided and inspectors are appointed by the council of a borough not having a separate court of quarter sessions, that council shall continue to be the local authority until they otherwise resolve.

The powers and duties of the councils of boroughs with a population of less than 10,000 in 1881, whether quarter sessions boroughs or not, in relation to weights and measures have been taken away by s. 39 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *post*, p. 434. See also s. 2 of the Weights and Measures (Purchase) Act, 1892 (55 & 56 Vict. c. 18), *post*, p. 517.

The powers and duties of county justices in the execution of the Weights and Measures Acts have been transferred to the county council by s. 3 (xiii) of the Local Government Act, 1888.

Expenses of local authority.

51. The expense of providing and re-verifying local standards, the salaries of the inspectors, and all other expenses incurred by the local authority under this Act shall be paid out of the local rate.

The treasurer of the county in which a borough in England having a separate court of quarter sessions is situate shall exclude from the account kept by him of all sums expended out of the county rate to which the borough is liable to contribute all sums expended in pursuance of this Act.

Power of local authorities to combine for purposes of Act.

52. Any two or more local authorities may combine, as regards either the whole or any part of the areas within their jurisdiction, for all or any of the purposes of this Act, upon such terms and in such manner as may be from time to time mutually agreed upon.

An inspector appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority jurisdiction and duties as if he had been appointed by each of the authorities who are parties to such agreement.

53. * * * * *

This section, which empowered local authorities to make byelaws with respect to the verification of Weights and Measures, and generally for regulating the duties of inspectors appointed by them under this Act, has been repealed by s. 5 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28), and any byelaws made under

it and general regulations made under s. 9 of the Weights and Measures Act, 1889, *post*, have ceased to have effect. These matters are now governed by regulations made under s. 5 of the Act of 1904 by the Board of Trade which came into force on October 1st, 1907. Section 53.

54. Where a town or other place has been or may hereafter be authorised under any Act, whether local or otherwise, to appoint inspectors or examiners of weights and measures, or where any other place has been or may hereafter be, by charter Act of Parliament or otherwise, possessed of legal jurisdiction, and such town or place is for the time being provided with legal local standards, the magistrates of such town or place, or other persons authorised as aforesaid, may appoint inspectors of weights and measures within the limits of their jurisdiction, and suspend and dismiss such inspectors, and such inspectors shall within such limits exclusively have the same power and discharge the same duties as inspectors of weights and measures appointed under this Act by the local authority for the county, and shall pay over and account for the fees received by them under this Act, to such persons as may be duly authorised by the magistrates or other persons appointing them. Appointment of inspectors in towns and other places.

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III.—Miscellaneous.

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63. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes of this Act, and to revoke and vary any such order. Orders in Council.

All Orders in Council made under this Act shall be published in the London Edinburgh and Dublin Gazettes, and shall be forthwith laid before both Houses of Parliament, and shall have full effect as part of this Act.

64. The schedules to this Act, with the notes thereto, shall be construed and have effect as part of this Act. Effect of schedules.

65. Where an enactment refers to any Act repealed by this Act, or to any enactment thereof, the same shall be construed to refer to this Act or to the corresponding enactment of this Act. Construction of Acts referring to repealed enactments.

Savings and Definitions.

* * * * *

69. Nothing in this Act shall extend to supersede, limit, take away, lessen, or prevent the authority which any person or body politic or corporate, or any person appointed at any court leet for any hundred or manor, or any jury or ward inquest, may have or possess for the examining, regulating, seizing, breaking, or destroying any weights, balances, or measures within their respective jurisdictions, and for the purposes of this section the court of burgesses of the city of Westminster shall be deemed to be a body politic, and nothing in this Act shall be deemed to repeal or supersede the Acts relating to that court, or lessen, diminish, or alter the powers of the same. Act not to abridge the power of the leet jury, &c.

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Schedule 4.

Sections 40, 50, 64.

FOURTH SCHEDULE.

LOCAL AUTHORITIES.

ENGLAND.

Area.	Local Authority.	Local Rate.
County	The justices in general or quarter sessions assembled.	The county rate.
County of the city of London	The court of the Lord Mayor and Aldermen of the city.	The consolidated rate.
Borough	The mayor, aldermen, and burgesses acting by the council.	The borough fund and borough rate.

* * * * *

Notes.

For the purposes of this schedule—

The expression "county," as regards England, does not include a county of a city or a county of a town, but includes every riding, division, or parts of a county having a separate court of quarter sessions. The Soke of Peterborough shall be deemed to be a county, but every other liberty of a county not forming part of the city of London shall be deemed to form part of the county in which the same is situate or which it adjoins, and if it adjoins more than one county, then of the county with which it has the longest common boundary.

The expression "borough," as regards England, means any place for the time being subject to the Municipal Corporation Act, 1835, and any Act amending the same, which has a separate commission of the peace.

The reference to the Municipal Corporations Act, 1835, is now to be read as referring to the Municipal Corporations Act, 1882. See s. 242 of that Act, *ante*, p. 160.

* * * * *

THE BOROUGH CONSTABLES ACT, 1883.

(46 & 47 VICT. c. 44.)

An Act to explain the effect of Section One Hundred and Ninety-five of the Municipal Corporations Act, 1882. [25th August, 1883.]

WHEREAS doubts have arisen as to the effect of section one hundred and ninety-five of the Municipal Corporations Act, 1882, and it is expedient to remove such doubts:

Be it enacted, &c., as follows:

Short title.

1. This Act may be cited as the Borough Constables Act, 1883.

Explanation of 45 & 46 Vict. c. 50, s. 195.

2. Nothing in section one hundred and ninety-five of the Municipal Corporations Act, 1882, shall be taken to have repealed section twenty of the Town Police Clauses Act, 1847, or section twelve of the Prevention of Crimes Act, 1871.

THE CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1883.

(46 & 47 Vict. c. 51.)

An Act for the better prevention of Corrupt and Illegal Practices at Parliamentary Elections. [25th August, 1883.]

This Act applies only to corrupt and illegal practices at parliamentary elections, but some of its provisions relate to the disqualification of persons guilty of such practices for voting at municipal elections, and others are incorporated by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), *post*, p. 377, and are thus made applicable to municipal elections.

Sections 1 and 2, which contain definitions of treating and undue influence, are incorporated by s. 2 (1) of 47 & 48 Vict. c. 70, and are set out in the Third Schedule to that Act, *post*, p. 404. Section 37 and part of s. 38 are incorporated by s. 23 of that Act, and are set out in the same schedule, Part II., *post*, p. 405.

Corrupt Practices.

* * * * *

Punishment of person convicted on indictment of corrupt practices.

6.—(1.) A person who commits any corrupt practice other than personation, or aiding, abetting, counselling, or procuring the commission of the offence of personation, shall be guilty of a misdemeanor, and on conviction on indictment shall be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding two hundred pounds.

(2.) A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

(3.) A person who is convicted on indictment of any corrupt practice shall (in addition to any punishment as above provided) be not capable during a period of seven years from the date of his conviction :

(a) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office within the meaning of this Act ; or

(b) of holding any public or judicial office within the meaning of this Act, and if he holds any such office the office shall be vacated.

(4.) Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the

Section 6. House of Commons his election shall be vacated from the time of such conviction.

The provisions of this section are made applicable to corrupt practices at municipal elections by 47 & 48 Vict. c. 70, s. 2 (2), *post*, p. 377.

The expressions "public office" and "judicial office" are defined by s. 64 of this Act, *post*.

A person who is reported by an Election Court to have been guilty of a corrupt practice is subject to the same incapacity as if he had been convicted under this section. See s. 38 (5) of this Act, *post*, p. 405. These provisions do not apply to a candidate who is reported as having been guilty of a corrupt practice by his agents. *Morris* v. *Shrewsbury* (*Town Clerk*), [1909] 1 K. B. 342; 78 L. J. K. B. 234; 99 L. T. 964; 73 J. P. 28; 2 Smith, 123; 21 Cox C. C. 751; 7 L. G. R. 125.

Illegal Practices.

Certain expenditure to be illegal practice.

7.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made—

(a) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(b) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(c) on account of any committee room in excess of the number allowed by the First Schedule to this Act.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

The provisions of this Act with respect to illegal practices apply only to parliamentary elections, but are inserted here because a person guilty of any such practice is disqualified by s. 10 for being registered as an elector or voting at a municipal election. See note (*m*) to s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 17.

Other illegal practices are defined by ss. 8, 9, and 13–21, *post*. As to the disturbance of a political meeting during a parliamentary election, see the Public Meeting Act, 1908 (8 Edw. 7, c. 66).

Expense in excess of maximum to be illegal practice.

8.—(1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, in excess of any maximum amount in that behalf specified in the First Schedule to this Act.

(2.) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice. Section 8.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

9.—(1.) If any person votes or induces or procures any person to vote at any election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed by his agent other than his election agent.

Punishment on conviction of illegal practice.

10. A person guilty of an illegal practice, whether under the foregoing sections or under the provisions hereinafter contained in this Act, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the county or borough in which the illegal practice has been committed.

The disqualification created by this section applies to elections for an office under the Municipal Corporations Act, 1882. See the definition of "public office" in s. 64, *post*.

A person who is reported by an Election Court to have been guilty of an illegal practice is subject to the same incapacity as if he had been convicted under this section. See s. 38 (5) of this Act, *post*, p. 405, and see the note to s. 6, *ante*.

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Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice or payment to be illegal payment.

13. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment or expenses, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

The offence of illegal payment, employment, or hiring is only an illegal practice when a candidate or an election agent is personally guilty of it. See s. 21, *post*.

Employment of hackney carriages or of carriages and horses kept for hire.

14.—(1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll any public stage or hackney carriage or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of an illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the

Section 14.

conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt withdrawal from a candidature.

15. Any person who corruptly induces or procures any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing, in pursuance of such inducement or procurement, shall also be guilty of illegal payment.

Certain expenditure to be illegal payment.

16.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

Certain employment to be illegal.

17.—(1.) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to this Act, or except so far as payment is authorised by the first or second parts of the First Schedule to this Act.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed contrary to law.

Name and address of printer on placards.

18. Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the

candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds. Section 18.

19. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense in excess of a certain maximum, shall not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act. Saving for creditors.

20.—(a) Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by a licence (whether the licence be for consumption on or off the premises), or

(b) Any premises where any intoxicating liquor is sold, or is supplied to members of a club, society, or association other than a permanent political club, or

(c) Any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises, or

(d) The premises of any public elementary school in receipt of an annual parliamentary grant, or any part of such premises,

shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election, and if any person hires or uses any such premises or any part thereof for a committee room he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring:

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid. Use of committee room in house for sale of intoxicating liquor or refreshment, or in elementary school, to be illegal hiring.

21.—(1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) A candidate or an election agent of a candidate who is personally guilty of an offence of illegal payment, employment, or hiring shall be guilty of an illegal practice. Punishment of illegal payment, employment, or hiring.

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Disqualification of Electors.

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37, 38. * * * * *

Section 37 and part of s. 38 are incorporated by 47 & 48 Vict. c. 70, s. 23, and are set out in the Third Schedule to that Act, *post*, p. 405.

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Section 45.

Miscellaneous.

Inquiry by Director of Public Prosecutions into alleged corrupt or illegal practices.

45. Where information is given to the Director of Public Prosecutions that any corrupt or illegal practices have prevailed in reference to any election, it shall be his duty, subject to the regulations under the Prosecution of Offences Act, 1879, to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

Sections 45, 46, 50—57, 59, and 60 are incorporated by 47 & 48 Vict. c. 70, s. 30, *post*, p. 397, with certain additions.

The regulations under the Prosecution of Offences Act, 1879, are to provide for the Director of Public Prosecutions taking action in cases which appear to him to be of importance or difficulty or which from any other reason require his intervention. Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3), s. 2.

Removal of incapacity on proof that it was procured by perjury.

46. Where a person has, either before or after the commencement of this Act, become subject to any incapacity under the Corrupt Practices Prevention Acts or this Act by reason of a conviction or of a report of any election court or election commissioners, and any witness who gave evidence against such incapacitated person upon the proceeding for such conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the Court, if satisfied that the conviction or report so far as respects such person was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly.

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Legal Proceedings.

Trial in Central Criminal Court of indictment for corrupt practice at instance of Attorney-General.

50. Where an indictment as defined by this Act for any offence under the Corrupt Practices Prevention Acts or this Act is instituted in the High Court, or is removed into the High Court by a writ of certiorari issued at the instance of the Attorney-General, and the Attorney-General suggests on the part of the Crown that it is expedient for the purposes of justice that the indictment should be tried in the Central Criminal Court, or if a special jury is ordered, that it should be tried before a judge and jury at the Royal Courts of Justice, the High Court may, if it think fit, order that such indictment shall be so tried upon such terms as the Court may think just, and the High Court may make such orders as appear to the Court necessary or proper for carrying into effect the order for such trial.

Limitation of time for prosecution of offence.

51.—(1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence under the Corrupt Practices Prevention Acts or this Act shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by Election Commissioners shall be commenced within one year after the offence was committed, or within three months after the report of such Commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether

before an Election Court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts. Section 51.

(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

Persons charged with corrupt practice may be found guilty of illegal practice.

52. Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence), and any person charged with an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice, and a person charged with illegal payment, employment, or hiring, may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

Application of enactments of 17 & 18 Vict. c. 102, and 26 & 27 Vict. c. 29, relating to prosecutions for bribery.

53.—(1.) Sections ten, [*twelve, and thirteen*] of the Corrupt Practices Prevention Act, 1854, and section six of the Corrupt Practices Prevention Act, 1863 (which relate to prosecutions for bribery and other offences under those Acts), shall extend to any prosecution on indictment for the offence of any corrupt practice within the meaning of this Act, and to any action for any pecuniary forfeiture for an offence under this Act, in like manner as if such offence were bribery within the meaning of those Acts, and such indictment or action were the indictment or action in those sections mentioned, and an order under the said section ten may be made on the defendant; but the Director of Public Prosecutions or any person instituting any prosecution in his behalf or by direction of an Election Court shall not be deemed to be a private prosecutor, nor required under the said sections to give any security.

(2.) On any prosecution under this Act, whether on indictment or summarily, and whether before an Election Court or otherwise, and in any action for a pecuniary forfeiture under this Act, the person prosecuted or sued, and the husband or wife of such person, may, if he or she think fit, be examined as an ordinary witness in the case.

(3.) On any such prosecution or action as aforesaid it shall be sufficient to allege that the person charged was guilty of an illegal practice, payment, employment, or hiring within the meaning of this Act, as the case may be, and the certificate of the returning officer at an election that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, shall be sufficient evidence of the facts therein stated.

The sections of the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), which are referred to in this section, are as follows:—

["10. *It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the*

Section 53.

prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that] no indictment for bribery or undue influence shall be triable before any court of quarter sessions."

["12. *In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.*"]

["13. *It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.*"]

These sections, with the exception of the proviso to s. 10, have been repealed by the Costs in Criminal Cases Act, 1908, *post*, p. 654, and the costs of the prosecutions here referred to are now governed by the provisions of s. 6 of that Act. It is, however, still necessary to refer to the provisions of the Act of 1854 for the purposes of prosecutions under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. See the note to s. 30 of that Act, *post*.

Section 6 of the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29), is as follows:—

"6. In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connexion with which the offence is intended to be alleged to have been committed guilty of bribery, treating, or undue influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat."

Prosecution on summary conviction, and appeal to quarter sessions.

54.—(1.) All offences under this Act punishable on summary conviction may be prosecuted in manner provided by the Summary Jurisdiction Acts.

(2.) A person aggrieved by a conviction by a court of summary jurisdiction for an offence under this Act may appeal to general or quarter sessions against such conviction.

Application of Summary Jurisdiction and Indictable Offences Acts to proceedings before Election Courts.

55.—(1.) Except that nothing in this Act shall authorise any appeal against a summary conviction by an Election Court, the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence summarily before an Election Court, in like manner as if it were an offence punishable only on summary conviction, and accordingly the attendance of any person may be enforced, the case heard and determined and any summary conviction by such Court be carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with under those Acts in like manner as if the Court were a petty sessional court for the county or place in which such conviction took place.

(2.) The enactments relating to charges before justices against persons for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an Election Court orders a person to be prosecuted on indictment in like manner as if the Court were a justice of the peace.

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Exercise of jurisdiction of High Court, and making of rules of Court.

56.—(1.) Subject to any rules of Court, any jurisdiction vested by this Act in the High Court may, so far as it relates to indictments or other criminal proceedings, be exercised by any Judge of the Queen's Bench Division, and in other respects may either be exercised by one of the Judges for the time being on the rota for the trial of election petitions, sitting either in Court or at Chambers, or may be exercised by a Master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said Judges :

Provided that a Master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.

(2.) Rules of Court may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same, by the same authority by whom Rules of Court for procedure and practice in the Supreme Court of Judicature can for the time being be made.

Director of Public Prosecutions, and expenses of prosecutions. 42 & 43 Vict. c. 22.

57.—(1.) The Director of Public Prosecutions in performing any duty under this Act shall act in accordance with the regulations under the Prosecution of Offences Act, 1879, and subject thereto in accordance with the directions (if any) given to him by the Attorney-General ; and any assistant or representative of the Director of Public Prosecutions in performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the Director of Public Prosecutions.

[(2.) *Subject to the provisions of this Act, the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of Public Prosecutions or his representative, or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a prosecution for felony are paid.*]

As to the regulations under the Prosecution of Offences Act, 1879, see the note to s. 45, *ante*.

Sub-s. (2) of this section has been repealed by the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 10, *post*. As to the costs of a prosecution, see the note to s. 53, *ante*.

* * * * *

Supplemental Provisions, Definitions, Savings, and Repeal.

Obligation of witness to answer, and certificate of indemnity.

59.—(1.) A person who is called as a witness respecting an election before any Election Court shall not be excused from answering any question relating to any offence at or connected with such election, on the ground that the answer thereto may criminate or tend to criminate himself or on the ground of privilege ;

Provided that—

(a) a witness who answers truly all questions which he is required by the Election Court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the Court stating that such witness has so answered : and

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(b) an answer by a person to a question put by or before any Election Court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him.

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts or this Act committed by him previously to the date of the certificate at or in relation to the said election, the Court having cognisance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any election commissioners, in like manner as if the expression "Election Court" in this section included election commissioners.

(5.) Where a solicitor or person lawfully acting as agent for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the Election Commissioners inquiring into such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition.

Submission of report of Election Court or commissioners to Attorney-General.

60. An Election Court or Election Commissioners, when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the Commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution.

* * * * *

General interpretation of terms.

64. In this Act, unless the context otherwise requires—

* * * * *

15 & 16 Vict. c. 57.

The expression "Election Commissioners" means commissioners appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same:

The expression "High Court" means Her Majesty's High Court of Justice in England:

42 & 43 Vict. c. 49.

The expressions "Court of summary jurisdiction" "petty sessional Court" and "Summary Jurisdiction Acts" have the same meaning as in the Summary Jurisdiction Act, 1879:

The expression "the Attorney-General" includes the Solicitor-

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General in cases where the office of the Attorney-General is vacant or the Attorney-General is interested or otherwise unable to act:

The expression "registration officer" means the clerk of the peace in a county, and the town clerk in a borough, as respectively defined by the enactments relating to the registration of parliamentary electors:

The expression "elector" means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used:

The expression "register of electors" means the said register roll or book:

The expression "polling agent" means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to or amending the same: 35 & 36 Vict. c. 33.

The expression "person" includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committeemen, or others:

The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly: 33 & 34 Vict. c. 75. 38 & 39 Vict. c. 55.

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "personal expenses" as used with respect to the

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expenditure of any candidate in relation to any election includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election :

The expression " indictment " includes information :

The expression " costs " includes costs, charges, and expenses :

The expression " payment " includes any pecuniary or other reward ; and the expressions " pecuniary reward " and " money " shall be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly :

The expression " Licensing Acts " means the Licensing Acts, 1872 to 1874 :

Other expressions have the same meaning as in the Corrupt Practices Prevention Acts.

The definitions contained in this section are made applicable with certain exceptions to expressions in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), by s. 34 of that Act, *post*, p. 399.

* * * * *

GENERAL RULES

For the Effectual Execution of Part IV. of the Municipal Corporations Act, 1882, Made by the Judges for the time being on the Rota for the Trial of Parliamentary Election Petitions.

As to the authority for making these rules, see the note to 47 & 48 Vict. c. 70, s. 30, *post*, p. 398.

1. The presentation of a municipal election petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt, which may be in the following form :—

> Received on the day of at the Master's office a petition touching the election of *A.B.*, alderman, councillor [&c., *as the case may be*] for the borough of , purporting to be signed by [*insert the names of petitioners*].
>
> *C.D.*, Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3), of the Act.

The Master's office is Room 184, Royal Courts of Justice.

2. A municipal election petition shall contain the following statements :

(1) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule unless otherwise ordered by the High Court or a Judge thereof.

4. The petition shall conclude with a prayer, as, for instance, that some specified person shall be declared duly returned or elected, or that the election shall be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient :—

In the High Court of Justice.

The Municipal Corporations Act, 1882.

Election for [*state the place and office for which election held*] holden on the day of , A.D.

The petition of *A.* of [*or A.* of , and *B.* of ; *as the case may be*] whose names are subscribed.

Rule 5.

1. Your petitioner *A.* is a person who voted [*or* had a right to vote, *as the case may be*] at the above election [*or* was a candidate at the above election]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

2. And your petitioners state that the election was holden on the day of , A.D. , when *A.B.*, *C.D.*, and *E.F.* were candidates, and that *A.B.* and *C.D.* have been in the usual manner declared to be duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A.B.* was not duly elected, and that the election was void [*or* that the said *E.F.* was duly elected and ought to have been returned, *or as the case may be*].

(Signed)
A.
B.

6. Evidence need not be stated in the petition, but the High Court or a Judge thereof may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered.

Where a petition contains a general allegation of corrupt or illegal practices, an order will be made forthwith for particulars stating the nature of the offences that are charged. The respondent can also obtain full particulars of the specific charges made against him, but such particulars will not be required to be given until a short period before the trial of the petition. The time within which particulars will be ordered to be given depends upon the size of the borough, the number of witnesses to be called, and the other circumstances of the particular case. In recent cases the time fixed has generally been from seven to ten days before the trial. See *Rushmere* v. *Isaacson*, [1893] 1 Q. B. 118; 41 W. R. 124; 57 J. P. 790; 9 T. L. R. 47.
As to the mode of reckoning the time, see rules 37 and 38.

7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a Judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

Where a petition asks for a scrutiny and claims the seat, the petitioner can only be required under this rule to specify the votes to which he objects, and the grounds of his objection. Rule 6 does not apply to such a case, and particulars cannot be ordered under that rule. *Munro* v. *Balfour*, [1893] 1 Q. B. 113; 67 L. T. 526; 41 W. R. 143; 57 J. P. 789; 9 T. L. R. 2; *Furness* v. *Beresford*, [1898] 1 Q. B. 495; 67 L. J. Q. B. 417; 78 L. T. 137; 46 W. R. 359; 14 T. L. R. 249.

Rule 7.

As to the mode of reckoning the six days, see rules 37 and 38.

The Court has no power under this rule to extend the time within which the list of objections is required to be delivered. *Neild* v. *Batty*, (1874) L. R. 9 C. P. 104; 43 L. J. C. P. 73; 29 L. T. (N. S.) 747; 22 W. R. 407; 38 J. P. 264.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 93rd section of the Act, sub-section 10, such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a Judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

This rule applies to the case where the seat is claimed by the petition and a recriminatory case is set up by the respondent in order to show that the petitioner was not duly elected.

As to the list of objections, see the notes to rule 7.

9. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practise as a solicitor in the High Court of Justice, whom he or they authorise to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to him or them may be left; and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

10. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

11. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The Master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed,

Rule 12.

and also the name of the respondent's agent, and address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a Judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

15. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a Judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

As to security for costs, see s. 89 of the Municipal Corporations Act, 1882, *ante*, p. 76.

17. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a Judge thereof.

19. Money so deposited shall, if and when the same is no longer

needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court, or order of a Judge thereof. Rule 19.

20. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court or Judge may require.

21. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

22. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

23. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

24. The recognizance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

25. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows :—

Be it remembered that on the day of , in the year of our Lord 18 , before me [*name and description*] came *A.B.* of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of hundred pounds [*or* the following sums], (that is to say) the said *C.D.* the sum of £ , the said *E.F.* the sum of £ , the said *G.H.* the sum of £ , and the said *J.K.* the sum of £ , to be levied on his [*or* their respective] goods and chattels, lands, and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one, add,* or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners, or any of them,] under the Municipal Corporations Act, 1882, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[*Signature of sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the at , before me,

C.D.

A justice of the peace [*or, as the case may be*].

26. The recognizance or recognizances shall be left at the Master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

Rule 26. The security may (unless the High Court or a judge thereof shall otherwise order on summons) be given to any amount not less than £300; but the High Court or a Judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount, not exceeding with the amount for which security shall have been already given £500. And in default of compliance with such order, no further proceedings shall be had on the petition.

27. The time for giving notice of any objection to a recognizance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or in case of further security, within five days after service of notice of the nature thereof, exclusive of the day of such service.

28. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

29. Any objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a Judge, upon summons taken out by either party to declare the security sufficient or insufficient.

30. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or Judge may think fit.

31. If an objection be allowed and the security be declared insufficient, the Master or Judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

32. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or Judge, and in default of such order shall form part of the general costs of the petition.

33. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the High Court of Justice that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows :—

In the High Court of Justice. Rule 33.

Municipal Corporations Act, 1882.

I *A.B.* of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts of the clear value of £ .

Sworn, *&c.*

34. The order of the Master for payment of costs shall have the same force as an order made by a Judge, and may be enforced in like manner as a Judge's order in an ordinary proceeding in the High Court of Justice.

35. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.

36. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

37. The days mentioned in rules 7 and 8, and in any rule of Court or Judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

38. When the last day for presenting petitions, or filing lists of votes or objections, under rules 7 and 8, or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day ; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

39. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed " Municipal Election List."

40. The time of the trial of each municipal election petition shall be fixed by the Election Judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the

Rule 40.

town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

41. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

See s. 93 (1) of the Municipal Corporations Act, 1882, *ante*, p. 78.

42. The notice of trial may be in the following form :—

MUNICIPAL CORPORATIONS ACT, 1882.

Election petition of
Borough of

Take notice that the above petition [*or* petitions] will be tried at on the day of and on such other subsequent days as may be needful.

Dated the day of

Signed, by order,
A.B.,

The Master appointed under the above Act.

43. A Judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the Judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

44. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

45. No formal adjournment of the Court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

46. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

47. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the High Court of Justice, or a Judge, may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the

election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order. Rule 47.

The Court or Judge may also make such order as to costs as may be just.

48. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a Judge thereof.

As to the power of the High Court to direct the case raised by a petition to be stated as a special case, see s. 93 (7) of the Municipal Corporations Act, 1882, *ante*.

49. The title of the Court held for the trial of a municipal election petition may be as follows :—

"Court for the trial of a municipal election petition for the borough of [*or as may be*] between petitioner and respondent."

and it shall be sufficient so to entitle all proceedings in that Court.

50. An officer shall be appointed for each Court for the trial of a municipal election petition by the Election Judges, at the time that they assign the petition to the barrister : such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that Court. He, by himself, or in the case of need, his sufficient deputy, shall perform all the functions incident to the officer of a Court of record, and also such duties as may be prescribed to him.

51. The commissioner may appoint a proper person to act as crier and officer of the Court.

52. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

See s. 99 (4) of the Municipal Corporations Act, 1882, *ante*, p. 83.

53. The amount to be paid to any witness whose expenses shall be allowed by the commissioner trying the petition shall be ascertained and certified by the registrar ; or in the event of his becoming incapacitated from giving such certificate, by the commissioner.

54. The order of the Court to compel the attendance of a person as a witness may be in the following form :—

Court for the trial of a municipal election petition for [*complete the title of the Court*] the day of

To *A.B.* [*describe the person*]. You are hereby required to attend before the above Court at [*place*] on day of at the hour of [*or* forthwith, *as the case may be*], to be examined as a witness in the matter of the said petition, and to attend the said Court until your examination shall have been completed.

As witness my hand, *A.B.*,

The Commissioner to whom the trial of the said petition is assigned.

Rule 55.

55. In the event of its being necessary to commit any person for contempt, the warrant may be as follows :—

At a Court holden on at for the trial of a municipal election petition for the borough of before *A.B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Municipal Corporations Act, 1882."

Whereas *C.D.* has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof. The said Court does therefore sentence the said *C.D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the Court further orders that the sheriff of the borough [*if any or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C.D.* may be found, shall take the said *C.D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence ; and the Court further orders the said gaoler to receive the said *C.D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A.B.

Signed the day of

A.B.

Any person who refuses to attend as a witness when ordered to do so is guilty of contempt of Court. See s. 94 (2) of the Municipal Corporations Act, 1882, *ante*, p. 80.

56. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

57. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under the Municipal Corporations Act, 1882, as a Judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any Judge of the High Court.

An appeal lies to the Court of Appeal from the decision of the judge. *Harmon* v. *Park*, *ante*, p. 75 ; *Monkswell* v. *Thompson*, [1898] 1 Q. B. 353 ; 67 L. J. Q. B. 243 ; 77 L. T. 707 ; 14 T. L. R. 163.

58. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Municipal Corporations Act, 1882. Rule 58.

Borough of Petition of [*state petitioners*] presented day of

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

As to the withdrawal of a petition, see s. 95 of the Municipal Corporations Act, 1882, *ante*, p. 81 ; and 47 & 48 Vict. c. 70, s. 26, *post*, p. 392.

59. The notice of application for leave to withdraw shall be left at the Master's office.

60. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall cause the same to be published in the borough to which it relates.

The following may be the form of such notice :—

Municipal Corporations Act, 1882.

In the election petition for in which is petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice that by the rule made by the Judges, any person who might have been a petitioner in respect of the said election may within five days after the publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

61. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

62. The time and place for hearing the application shall be fixed by a Judge, and whether before the High Court, or before a Judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as herein-before provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the Court or Judge directs.

63. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section 1, of the said Act,

Rule 63. shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a Judge thereof, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a Judge thereof may allow.

64. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

See s. 97 of the Municipal Corporations Act, 1882, *ante*, p. 82.

65. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

66. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

67. The time for applying to be admitted as a respondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is given as herein-before directed, or such further time as the High Court or a Judge thereof may allow.

68. Costs shall be taxed by the Master, or at his request by any Master of the superior Court upon the rule of Court or Judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of Court, judgment, or order of a Judge in the ordinary proceedings in the High Court of Justice, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

As to what is a sufficient order for payment of costs, see *Pare* v. *Hartshorne*, (1874) 31 L. T. 486; 23 W. R. 138; *Reg.* v. *Mayor of Maidenhead*, *ante*, p. 85.

69. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

70. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April, 1883.

C. E. POLLOCK,
H. MANISTY,
HENRY C. LOPES,

The Judges for the time being on the rota for the trial of Parliamentary Election Petitions.

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

(47 & 48 Vict. c. 70.)

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. [14th August, 1884.]

Be it enacted as follows ; (that is to say,)

This Act supplements and in part repeals the provisions of Part IV. (ss. 77—104) of the Municipal Corporations Act, 1882, relating to corrupt practices and election petitions. Some of the provisions of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), which applies to parliamentary elections, are incorporated by this Act, and are set out, *ante, pp.* 353 *et seq.*

This Act is made applicable to county council elections by s. 75 of the Local Government Act, 1888, with the necessary modifications, such as the substitution of "county" for "borough" and of "electoral division" for "ward."

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. Short title.

Corrupt Practices.

2.—(1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation. Definition and punishment of corrupt practice at municipal election.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.

Knowingly making a false declaration as to election expenses is to be deemed a corrupt practice by s. 21 (5), *post*, p. 389.

As to the punishment for corrupt practices at a parliamentary election, see s. 6 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), *ante*, p. 353.

Prosecutions for corrupt practices may also be tried before an Election Court under s. 28 of this Act.

Where several acts of bribery have been committed, each act is a separate offence. *Milnes* v. *Bale*, (1875) L. R. 10 C. P. 591 ; 44 L. J. C. P. 336 ; 33 L. T. 174 ; 23 W. R. 660 ; 39 J. P. 743.

The expression "corrupt practice" is a general term which includes several offences, and an indictment is bad if it does not specify the particular sort of corrupt practice that is charged. *Reg.* v. *Stroulger*, (1886) 17 Q. B. D. 327 ; 55 L. J. M. C. 137 ; 55 L. T. 122 ; 34 W. R. 719; 2 T. L. R. 731 ; *Reg.* v. *Norton*, (1886) 16 Cox C. C. 59.

Section 3.

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

3.—(1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an Election Court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the Election Court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

As to the incapacity of a person who has been convicted of a corrupt practice, see the note to s. 2; and see s. 31, *post*, as to the vacating of any office held by such person.

The effect of this section is that a candidate who is reported as having been personally guilty of bribery is, among other incapacities, incapable of being registered for seven years as an elector or of voting at any of the elections mentioned in s. 6 (3) of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), *ante*, p. 353. If, however, he is only reported as having been guilty of bribery by his agents, he is not disqualified for voting, though he is incapable of holding any corporate office in the borough for three years. *Morris* v. *Shrewsbury* (*Town Clerk*), [1909] 1 K. B. 342; 78 L. J. K. B. 234; 99 L. T. 964; 2 Smith 123; 73 J. P. 28; 21 Cox C. C. 751; 7 L. G. R. 125.

A candidate who has been reported as guilty by his agents of treating or undue influence may escape the consequences mentioned in sub-s. (2) of this section if the Election Court make a further report to the effect set out in s. 19, *post*. That provision, however, does not apply where a candidate has been reported as guilty by his agents of any corrupt practice other than treating or undue influence.

Illegal Practices.

Certain expenditure to be illegal practice.

4.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(a) on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares or otherwise; or

(b) to an elector on account of the use of any house, land, building,

or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(c) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

For the definitions of the terms "candidate" and "committee room," see s. 34.

As to the date at which a candidate is to be taken to have begun, see *Walsall*, (1892) 4 O'M. & H. 123; *Elgin and Nairn*, (1895) 5 O'M. & H. 1; *Lancaster*, (1896) 5 O'M. & H. 39.

As to the power of the Court to grant relief by allowing an act which would otherwise be an illegal practice to be an exception from the provisions of this Act, see s. 20. See also the saving in s. 15 of the rights of creditors who, at the time when a prohibited contract was made, were ignorant that it was in contravention of this Act.

A payment of 2*s.* for a voter's railway fare has been held to avoid an election. *Southampton*, (1895) 5 O'M. & H. 17; 12 T. L. R. 237. In that case, which was decided under the similar provision contained in s. 7 of the Corrupt and Illegal Practices Prevention Act, 1883, *ante*, p. 354, it was pointed out by Wright, J., that in the case of a voter receiving such payment no offence is committed by him unless he knows the same to be in contravention of the Act; but the person making the payment is equally guilty of an illegal practice, whether he knows or not that he is acting in contravention of the statute.

Payments for the stabling and baiting of horses sent for the conveyance of electors is within this section. *Lichfield*, (1895) 5 O'M. & H. 27.

The following acts or omissions are made illegal practices by this Act:

(1) payments on account of the conveyance of electors, or of the exhibition of any address, bill, or notice, or of any committee room in excess of the number allowed by the Act (s. 4);
(2) expenses incurred in excess of the maximum allowed by the Act (s. 5);
(3) voting when prohibited, or inducing a prohibited person to vote (s. 6);
(4) publishing a false statement of the withdrawal of a candidate (s. 6);
(5) payment of election expenses more than twenty-one days after the election (s. 21).

The following acts or omissions are illegal practices only when they are committed by a candidate or with his knowledge and consent:

(6) causing to be printed, published, or posted a bill, placard, or poster not bearing the name and address of the printer and publisher (s. 14);
(7) illegal payment, employment, or hiring as defined by ss. 9—16 (s. 17);
(8) failure to make the return and declaration respecting election expenses (s. 21 (5)).

Section 4.

The making or publishing of any false statement of fact in relation to the personal character or conduct of a candidate at a parliamentary election, for the purpose of affecting his return, is made an illegal practice by 58 & 59 Vict. c. 40, but that Act does not apply to municipal elections.

Expense in excess of maximum to be illegal practice.

5.—(1.) Subject to such exception as may be allowed in pursuance of this Act (*a*), no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following; (that is to say,)

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors (*b*).

(2.) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election: Provided that—

(a) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(b) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(c) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or Election Court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses.

Section 5.

(*a*) As to the power of the Court to grant relief by allowing an act which would otherwise be an illegal practice to be an exception from the provisions of this Act, see s. 20. For the definition of the term "candidate," see s. 34.

(*b*) Every candidate at an election for the office of councillor is required by s. 21 (3) to send to the town clerk a return of his election expenses within twenty-eight days after the election. The number of electors in the borough or ward means the number on the burgess roll (s. 34). It is to be noticed that this section does not authorise the incurring of any expense by a candidate at an election for the office of mayor, alderman, or elective auditor. See *Ex parte Gale*, (1905) 69 J. P. 281; 49 Sol. J. 334; 3 L. G. R. 421; *Ex parte Tolley*, (1907) 71 J. P. 236; 5 L. G. R. 473; 23 T. L. R. 372.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

6.—(1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

As to persons prohibited from voting, see ss. 13 (3), 22, and 23, *post*, and note (*m*) to s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 17.

Although it is the duty of an election agent to warn persons employed by him for payment in the election not to vote, his failure to do so does not amount to procuring within the meaning of this section. *Stepney*, (1892) 4 O'M. & H. 178.

But for the proviso in sub-s. (3), a candidate would be subjected to the incapacities mentioned in s. 8 (2) by an offence committed under this section by his agent without his knowledge or consent.

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the borough in which the illegal practice has been committed.

By s. 34, *post*, the expression "public office" has the same meaning as it has in 46 & 47 Vict. c. 51, s. 64, *ante*, p. 363.

As to the duty of the Public Prosecutor to prosecute persons who appear to him to have been guilty of illegal practices, see s. 28, *post*.

A person convicted of an illegal practice may appeal to Quarter Sessions under s. 54 of the Corrupt and Illegal Practices Prevention Act, 1883, *ante*, p. 360, which is incorporated by s. 30, *post*.

Incapacity of candidate reported guilty of illegal practice. 45 & 46 Vict. c. 50.

8.—(1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly (*a*).

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in reference to such election, the Election Court shall report in writing to the High Court

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whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice (*b*).

(*a*) See s. 87 of the Municipal Corporations Act, 1882, *ante*, p. 72.

As to the time within which a petition under this section must be presented, see s. 25, *post*.

(*b*) See also s. 38 (5) of the Corrupt and Illegal Practices Prevention Act, 1883, *post*, p. 405, which is incorporated by s. 23, *post*; and see the note to s. 3, *ante*. The Election Court is constituted by s. 92 of the Municipal Corporations Act, 1882. As to the incapacity of a person convicted of an illegal practice, see s. 7, *ante*.

A candidate who has been reported as guilty of an illegal practice by his agents will escape the consequences mentioned in this section if the Election Court makes a further report to the effect set out in s. 19, *post*.

In the case of any of the illegal practices mentioned in s. 6, the candidate is exempted by sub.-s. (3) of that section if the offence was committed without his knowledge and consent.

Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice or payment to be illegal payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

For the definition of the expression "person," see s. 34, *post*.

As to the maximum amount allowed for expenses, see s. 5; and as to the power of the Court to allow a payment to be an exception from the provisions of the Act, see s. 20.

For examples of illegal payments, see s. 12.

A payment of 5*s.* to a voter for the loss of his hat at a public meeting was held not to be illegal. *Stepney*, (1886) 4 O'M. & H. 34; 2 T. L. R. 559.

Employment of hackney carriages, or of carriages and horses kept for hire.

10.—(1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

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(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

The effect of this section is to prohibit any horse or carriage which is ordinarily let out for hire from being used for the purpose of conveying electors to or from the poll except at their own cost. There is nothing to prevent the owners of private carriages or other vehicles from using or lending them for this purpose, but section 4 prohibits any payment for their use.

Corrupt withdrawal from a candidature.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

Certain expenditure to be illegal payment.

12.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

A payment for polling cards inviting the recipient to vote for a particular candidate is not illegal; but cards bearing the respondent's portrait and asking voters to vote for him, which were printed in his colours and were specially made for the purpose of being worn in hats, were held to be marks of distinction within this section. *Walsall*, (1892) 4 O'M. &H. 123. See also *Clare*, (1892) *ibid.* 162; *Pontefract*, (1893) *ibid.* 200.

Broad strips of canvas stretched across the streets and bearing the words "Isaacson for Stepney" were held to be banners. *Stepney*, (1892) 4 O'M. & H. 178. Portraits of a candidate printed on linen with laths at the top and bottom, which were carried about on sticks or suspended by strings across the streets, and strips of linen stretched across the streets bearing the words "Vote for Benn," were also held to be banners. *St. George's Division*, (1895) 5 O'M. & H. 89. But a payment for repairs to the roof of a house which had been damaged by fixing ropes to it for the purpose of suspending a banner across the street was held not to be illegal. *Stepney*, (1886) 4 O'M. & H. 34; 2 T. L. R. 559.

As to the power of the Court to allow a payment to be an exception from the provisions of the Act, see s. 20.

Certain employment to be illegal.

13.—(1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

(a) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person

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may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(b) one polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

As to the appointment of polling agents, see the note to s. 4 of the Ballot Act, 1872, *ante*, p. 261. This section makes the appointment of a paid election agent at a municipal election illegal. See note (*d*) to s. 58 of the Municipal Corporations Act, 1882, *ante*, p. 61; and see *Ex parte Walker*, *post*, p. 387.

The employment of persons for payment to keep order at public meetings is illegal under this section. *Ipswich*, (1886) 4 O'M. & H. 70; 54 L. T. 619.

The payment need not be in money. See the definition of payment in 46 & 47 Vict. c. 51, s. 64, *ante*, p. 364, which is incorporated by s. 34 of this Act. Thus the supply of gratuitous refreshments to workers at an election has been held to render their employment illegal. *Barrow-in-Furness*, (1886) 4 O'M. & H. 76; 54 L. T. 618.

A person who is employed for payment under this section is not precluded from canvassing in his spare time if in so doing he acts merely as a voluntary assistant. *Elgin and Nairn*, (1895) 5 O'M. & H. 1; *Lichfield*, (1895) 5 O'M. & H. 27.

In a parliamentary election where a sub-agent voted and the election agent on hearing that he had voted refused to pay him his fee, it was held that no offence had been committed. *Lichfield*, *supra*.

As to the power of the Court to allow any employment to be an exception from the provisions of the Act, see s. 20.

A person who votes when he knows that he is prohibited by this section is guilty of an illegal practice (s. 6).

Name and address of printer on placards.

14. Every bill, placard, or poster having reference to a municipal election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

An election address in the form of a circular sent by post is not necessarily a bill within the meaning of this section. See the cases noted in 5 T. L. R. 136, 159, 160, 170; and see *Cockermouth*, (1901) 5 O'M. & H. 155. As to the meaning of the term "bill," see *Alcott* v. *Emden*, (1904) 68 J. P. 434; 48 Sol. J. 495; 2 L. G. R. 1313; 20 T. L. R. 487. An offence may be committed under this section even if the document was issued before the election began. *Ibid.*

As to what is sufficient evidence of printing or causing to be printed, see *Bettesworth* v. *Allingham*, (1885) 16 Q. B. D. 44; 34 W. R. 296; 50 J. P. 55; 2 T. L. R. 66.

As to the punishment for an illegal practice, see s. 7; and as to the power of the Court to grant relief to a person who has committed an offence under this section, see the notes to s. 20.

Section 14.

Saving for creditors.

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

See ss. 4, 5, 9, and 12, *ante*.

Use of certain premises for committee rooms or meetings to be illegal hiring.

16.—(1.) (a) Any premises which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(b) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

See the definition of "committee room" in s. 64 of 46 & 47 Vict. c. 51, *ante*, p. 363, which is incorporated by s. 34, *post*.

The use of a room in a coffee tavern which had a separate entrance and no direct communication with the part where refreshments were sold was held not to be illegal. *Pascoe* v. *Puleston*, (1886) 50 J. P. 134.

It is to be observed that the provisions of this section differ in several particulars from those contained in 46 & 47 Vict. c. 51, s. 20, *ante*, p. 357, with respect to parliamentary elections. The latter section contains an exception in favour of permanent political clubs, and does not prohibit the use of any premises for holding meetings as distinguished from their use for committee rooms. On the other hand, no part of the premises of a public elementary school in receipt of a parliamentary grant may be used for a committee room at a parliamentary election, but there is no such prohibition in the case of a municipal election.

Punishment of illegal payment, employment or hiring.

17. —(1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

As to the punishment for illegal practices, see ss. 7 and 8, *ante*

Section 18.

Avoidance of election for extensive illegal practices, &c.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the Election Court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the Election Court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.

As to the avoidance of an election for general corruption, see s. 81 of the Municipal Corporations Act, 1882, *ante*, p. 71.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

Report exonerating candidate in certain cases of corrupt practice by agents.

19. Where, upon the trial of an election petition respecting a municipal election, the Election Court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the Election Court further report that the candidate has proved to the Court—

(a) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(b) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(c) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(d) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

This section empowers the Court to relieve a candidate from the consequences of offences committed by his agents, but it does not apply where he has been guilty by his agents of any corrupt practice other than treating or undue influence. Section 20 provides for the granting of relief to persons, whether candidates or not, who have been guilty of offences against the Act.

Where the agent of two joint candidates had paid 2*s.* for a voter's railway fare, the Court held that this was an offence of a trivial character and exonerated one of the candidates, but declared the election of the other candidate to be void because they were not satisfied that all reasonable means had been taken by him for preventing the commission of corrupt and illegal practices. *Southampton*, (1895) 5 O'M. & H. 17; 12 T. L. R. 237.

Section 20.

Power of High Court and Election Court to except innocent act from being illegal practice, &c.

20. Where, on application made, it is shown to the High Court or to a municipal Election Court by such evidence as seems to the Court sufficient—

(a) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c) that such notice of the application has been given in the said borough as to the Court seems fit;

and under the circumstances it seems to the Court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

An Election Court is constituted under s. 92 of the Municipal Corporations Act, 1882, *ante*, p. 77.

As to the consequences of the acts or omissions referred to in this section, see ss. 7, 8, and 17. It is to be noticed that this section does not enable the Court to grant relief to a person who has been guilty of any corrupt practice. Power to grant relief where a candidate has failed to make the required return and declaration respecting election expenses is given by s. 21 (7).

Inadvertence has been defined as meaning negligence or carelessness, where the circumstances show an absence of bad faith. *Ex parte Lenanton*, (1889) 53 J. P. 263; 5 T. L. R. 173. See also *Mackinnon* v. *Clark*, [1898] 2 Q. B. 251; 67 L. J. Q. B. 763, where inadvertence is described as meaning the overlooking or forgetting of something. In the *Walsall* case, (1892) 4 O'M. & H. 123, the Court (Pollock, B., and Hawkins, J.) held that ignorance of the law was not inadvertence, but in the *Stepney* case, (1892) 4 O'M. & H. 178, Cave and Vaughan Williams, JJ., held that inadvertence included cases where the party did not know that the act was illegal. See also *Southampton*, (1895) 5 O'M. & H. 17; 12 T. L. R. 237. The latter view appears to have been generally acted upon, although in some of the earlier cases the Court intimated that in future relief would not be granted on the ground that the applicant did not know the provisions of the Act. See *Ex parte Walker*, (1889) 22 Q. B. D. 384; 58 L. J. Q. B. 190; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260; 5 T. L. R. 217; and see *Ex parte Tolley*, *post*, p. 388.

An application for relief may be made before the election is held. *Ex parte Kyd*, (1897) 14 T. L. R. 64.

Where an application for relief is made to an Election Court, notice given in Court of the intention to apply for relief is sufficient. *Norwich*, (1886) 4 O'M. & H. 84. In other cases two clear days' notice should be given to the opposing candidates and the returning officer, and an advertisement should be inserted in a newspaper circulating in the borough, but the posting of notices about the borough is not necessary. *Ex parte Lenanton*, *supra*; *Ex parte Kyd*, *supra*. The application must be made upon affidavit setting out the facts which show that there was inadvertence, and this should be filed two clear days before the hearing. *Ex parte Haseldine*, (1895) 59 J. P. 71. As to costs, see *Ex parte Kyd*, *supra*.

An appeal lies to the Court of Appeal against the refusal of a Divisional Court to

Section 20. grant relief under this section. *Ex parte Walker, supra ;* see also *Ex parte Thomas,* (1889) 60 L. T. 728 ; 5 T. L. R. 234.

The following are instances in which relief has been granted under this section :— omission of name of printer or publisher on a bill, placard, or poster, *Ex parte Clark,* (1885) 52 L. T. 260 ; *Ex parte Birtwhistle,* (1889) 5 T. L. R. 321, and other cases noted 5 T. L. R. 195 ; *Ex parte Smith,* (1898) 42 Sol. J. 254 ; employment of a paid election agent, *Ex parte Walker, supra ;* employment of clerks or messengers in excess of the number allowed, and of paid canvassers, *Ex parte Darlington,* (1889) 53 J. P. 71 ; 5 T. L. R. 183 ; *Ex parte Thomas, supra ;* and other cases noted 5 T. L. R. 220 ; *Ex parte Hawkins,* (1899) 44 Sol. J. 102 ; holding meetings on licensed premises or premises where intoxicating liquor was supplied to members of a club, *Ex parte Hutchinson,* (1889) 5 T. L. R. 136 ; *Ex parte Kyd, supra ; Re Andrews,* (1899) 68 L. J. Q. B. 683 ; *Ex parte Hughes,* (1900) 45 Sol. J. 79 ; expenses incurred by a candidate for the office of elective auditor, *Ex parte Gale,* (1905) 69 J. P. 281 ; 49 Sol. J. 334 ; 3 L. G. R. 421 ; and see *Ex parte Tolley, infra ;* illegal hiring, *Ex parte Gaisford,* The Times, April 25th, 1904.

As a general rule relief will not be granted where an election petition is pending against the applicant. *Ex parte Wilks,* (1885) 16 Q. B. D. 114 ; 55 L. J. Q. B. 576 ; 34 W. R. 273 ; 50 J. P. 487. See also the cases reported, 5 T. L. R. 206, 220. But where the facts were not in dispute, relief was granted under this section although an election petition was pending which was based upon the act in respect of which relief was sought. *Ex parte Forster,* (1903) 89 L. T. 18 ; 67 J. P. 322 ; 1 L. G. R. 632 ; 19 T. L. R. 525 ; and in *Ex parte Gaisford, supra,* relief was granted although a summons against the applicant for illegal hiring was pending before the justices. A candidate for the office of elective auditor who was elected by a majority of one vote was refused relief in respect of the expense incurred by him in publishing an attack on another candidate, because the result of the election might have been affected by his act. *Ex parte Tolley,* (1907) 71 J. P. 236 ; 5 L. G. R. 473 ; 23 T. L. R. 372.

Sending in claims and making payments for election expenses.

21.—(1.) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice, but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section (*a*).

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a

declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect (*b*).

(4.) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse as is mentioned in this Act (*c*), sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.

(5.) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice, and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act (*d*).

(6.) The county court for the district in which the election was held, or the High Court, or an Election Court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk (*e*).

(7.) If the candidate applies to the High Court or an Election Court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the Court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the Court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the Court seems just (*f*).

(8.) The order may make the allowance conditional upon compliance with such terms as to the Court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10.) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

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(11.) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

(*a*) A payment after the time limited may be allowed under sub-s. (6). As to the punishment for an illegal practice, see ss. 7 and 8.

The provisions of this section are not made applicable to an election of a mayor, alderman, or elective auditor, because no expenses are allowed to be incurred by a candidate at any such election. See note (*b*) to s. 5, *ante*.

(*b*) The declaration as to expenses must be made by a candidate even if no expenses have in fact been incurred by him. *Ex parte Robson*, (1886) 18 Q. B. D. 336; 55 L. T. 813; 35 W. R. 290; 51 J. P. 199; 3 T. L. R. 274.

The requirements of the section are complied with if the return is posted within the twenty-eight days, although it does not reach the town clerk until after the expiration of that period. *Mackinnon* v. *Clark*, [1898] 2 Q. B. 251; 67 L. J. Q. B. 763; 79 L. T. 83; 14 T. L. R. 485.

In the case of a county council election the return is to be sent to the clerk of the county council. Local Government Act, 1888, s. 75 (5).

(*c*) As to the power of the Court to excuse the failure to make the return or declaration, see sub-s. (7). The fact that the return which has been sent contains errors does not render the candidate liable to a penalty under this sub-section. *Mackinnon* v. *Clark*, *supra*.

(*d*) As to the punishment for a corrupt practice, see s. 2.

(*e*) For an instance in which expenses were allowed to be paid after the time limited by this section, see *Re Hubberstey*, (1899) 43 Sol. J. 826.

(*f*) See the cases cited in the notes to s. 20, *ante*. In *Ex parte Robson*, *supra*, the Court allowed the excuse, and ordered the return and declaration to be made notwithstanding that the time limited by sub-s. (3) had elapsed. Other cases in which an excuse has been allowed are *Ex parte Matthews*, (1886) 2 T. L. R. 548; *Ex parte Brand*, (1887) 3 T. L. R. 397; *Ex parte Pennington*, (1898) 42 Sol. J. 254.

Disqualification of Electors.

Prohibition of persons guilty of offences from voting.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

See also s. 85 of the Municipal Corporations Act, 1882, *ante*, p. 72, as to the votes of persons guilty of corrupt practices.

A person who votes when prohibited by this section is guilty of an illegal practice under s. 6.

Application of ss. 37 & 38 of 46 & 47 Vict. c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part Two of the Third Schedule to this Act, shall apply as part of this Act.

See these sections, *post*, p. 405. They contain provisions relating to the incapacity of persons guilty of corrupt or illegal practices.

List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

24.—(1.) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the

report of any Election Court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty (*a*).

(2.) For the purpose of making out such list he shall examine the report of any Election Court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which such borough is situate.

(3.) The town clerk of any municipal borough shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification (*b*).

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses (*c*).

(5.) The revising authority shall determine such claims and objections and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors (*d*).

(6.) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any Election Court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the

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burgess roll, and shall be printed and published therewith wherever the same is printed or published (*e*).

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned.

45 & 46 Vict. c. 50.

(*a*) See the definition of the expression "public office" in s. 64 of 46 & 47 Vict. c. 51, *ante*, p. 363, which is incorporated by s. 34, *post*.

(*b*) See 6 & 7 Vict. c. 18, ss. 13, 15, 18, *ante*, pp. 218—221; and 41 and 42 Vict. c. 26, s. 15, *ante*, p. 333.

(*c*) See 6 & 7 Vict. c. 18, ss. 15—19, *ante*, pp. 219—221.

(*d*) The revising authority is now the revising barrister. 51 & 52 Vict. c. 10, s. 4.

(*e*) As to the printing of the burgess roll, see s. 48 of the Municipal Corporations Act, 1882, *ante*, p. 57.

Proceedings on Election Petitions.

Petition for illegal practice.

25.—(1.) A municipal election petition complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse.

Time for presentation of petition alleging illegal practices.

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

45 & 46 Vict. c. 50.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

As to the return and declaration respecting election expenses and the allowance of an authorised excuse, see s. 21.

A petition may be presented on the ground of an illegal practice under s. 8, *ante*. As to the grounds upon which an election petition may be presented under the Municipal Corporations Act, 1882, and the time within which it must be presented, see ss. 87 and 88 of that Act, *ante*, pp. 72, 74.

A petitioner cannot give evidence of offences alleged to have been committed after the date of the petition, unless the petition has been amended within the time limited by this section. *Cremer* v. *Lowles*, [1896] 1 Q. B. 504; 65 L. J. Q. B. 289; 74 L. T. 42; 44 W. R. 629; 60 J. P. 100; 12 T. L. R. 158.

Withdrawal of election petition.

26.—(1.) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties

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to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the Court on special grounds to be just so to do (*a*).

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions a reasonable time before the application for the withdrawal is heard, and the Court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative, may consider material (*b*).

(6.) Where in the opinion of the Court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the Court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration. 45 & 46 Vict. c. 50.

(7.) In every case of the withdrawal of an election petition by leave of the Election Court, such Court shall report in writing to the High Court whether, in the opinion of such Election Court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) When more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(*a*) As to the withdrawal of a petition, see s. 95 of the Municipal Corporations Act, 1882, and the notes thereto, *ante*, p. 81. See also rules 58—62, *ante*, p. 374.

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As to the form of the affidavits, see *Johnson* v. *Rankin*, (1880) 5 C. P. D. 553.

(*b*) The office of Director of Public Prosecutions was united with that of the Treasury Solicitor by s. 2 of the Prosecution of Offences Act, 1884 (47 & 48 Vict. c. 58), but that section has been repealed by the Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3), s. 3.

Continuation of trial of election petition.

27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

Power to adjourn is given by s. 93 (3) of the Municipal Corporations Act, 1882, *ante*, p. 78.

Attendance of Director of Public Prosecutions on trial of election petition, and prosecution by him of offenders.

28.—(1.) On every trial of a municipal election petition the Director of Public Prosecutions shall by himself or by his assistant, or by such representative as herein-after mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the Election Court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice (*a*).

(2.) It shall also be the duty of such Director, without any direction from the Election Court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the Court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the Election Court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said Court or before any other competent Court, any person who has not received a certificate of indemnity and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election (*b*).

(4.) Where a person is prosecuted before an Election Court for any corrupt or illegal practice, and such person appears before the Court, the Court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the Court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence (*c*).

Provided that, in the case of a corrupt practice, the Court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the Court, or the Court thinks it in the interests of justice expedient that he should be tried before some other Court, the Court, if of opinion that the evidence is sufficient to put the said person upon his trial for

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the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named (*d*).

(6.) Upon such order being made,

(a) if the accused person is present before the Court, and the offence is an indictable offence, the Court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(b) if the accused person is present before the Court, and the offence is not an indictable offence, the Court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(c) if the accused person is not present before the Court, the Court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an Election Court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882. 45 & 46 Vict. c. 50.

(8.) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the Election Court, and shall be paid as the expenses of that Court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the Court so to do, the Court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the Court may direct (*e*). 45 & 46 Vict. c. 50.

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(*a*) See note (*b*) to s. 26, *ante*.

(*b*) As to prosecutions by the Treasury Solicitor, see s. 30, *post*; and as to the certificate of indemnity, see 46 & 47 Vict. c. 51, s. 59, *ante*, p. 361.

(*c*) A person who is convicted of a corrupt practice on indictment is liable to a more severe punishment than that which can be inflicted under this section. See 46 & 47 Vict. c. 51, s. 6, *ante*, p. 353.

As to the fine for an illegal practice, see s. 7, *ante*.

(*d*) Where a person who was charged with a corrupt practice did not appear before the Election Court, it was held that the Court acted within its jurisdiction in ordering him to be prosecuted and in issuing a summons for his attendance under sub-s. (6) (c), without rehearing the evidence that had been given against him. *Reg.* v. *Shellard*, (1889) 23 Q. B. D. 273; 58 L. J. M. C. 142; 61 L. T. 120; 37 W. R. 706; 53 J. P. 821; 5 T. L. R. 519.

Under this sub-section the Election Court has jurisdiction to order that the prosecution shall take place in a different county from that in which the offence was committed and the election petition was heard. *Reg.* v. *Riley*; *Reg.* v. *Campion*, (1890) 59 L. J. M. C. 122; 63 L. T. 119; 55 J. P. 21; 17 Cox C. C. 120. See also these cases as to the form of the indictment where such an order has been made.

(*e*) This sub-section relates only to the costs at the trial. Where a petition has been withdrawn, there is no power to order payment of the costs incurred by the Public Prosecutor before the trial. *Pascoe* v. *Puleston*, (1886) 54 L. T. 733; 50 J. P. 134. Where a petition was unfounded, the petitioner was ordered to pay the costs of the Public Prosecutor. *Crossman* v. *Gent Davis*, (1886) 54 L. T. 628; *Worcester*, (1892) 4 O'M. &. H. 153.

Power to Election Court to order payment by borough or individual of costs of election petition.

29.—(1.) Where upon the trial of a municipal election petition it appears to the Election Court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the Court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the Court may think right as follows;

(a) if it appears to the Court that corrupt practices extensively prevailed in reference to the said election, the Court may order the whole or part of the costs to be paid by the borough; and

(b) if it appears to the Court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the Court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the Court to have been guilty of the offence of a corrupt or illegal practice, the Court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the Court in relation to the

said offence or to the said person to be paid by the said person to such person or persons as the Court may direct. Section 29.

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client. 45 & 46 Vict. c. 50.

As to the costs of an election petition, see also s. 98 of the Municipal Corporations Act, 1882, *ante*, p. 82, and the notes thereto. Where any costs are ordered to be paid by the borough, they are to be paid out of the borough fund or borough rate. Section 32 (1), *post*. As to the recovery of costs ordered to be paid by any person, see s. 32 (2), *post*.

Where the respondents abandoned their defence to a petition after the second day's hearing, the costs of the petitioners in attending subsequent proceedings taken before the Election Court by the Public Prosecutor were held to be costs of the petition. *Preece* v. *Harding*, W. N. 1889, p. 217.

As to the taxation of costs, see r. 68, *ante*, p. 376.

Miscellaneous.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of Public Prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions:— General provisions as to prosecution of offences under this Act. 46 & 47 Vict. c. 51.

(a) Where the Director of Public Prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an Election Court for any offence other than a corrupt practice committed in reference to a municipal election in any borough, he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(b) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections; and 45 & 46 Vict. c. 50.

(c) The giving or refusal to give a certificate of indemnity to a witness by the Election Court shall be final and conclusive. s. 94 (7).

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The incorporated sections of the Corrupt and Illegal Practices Prevention Act, 1883, are set out, *ante*, pp. 358—362. By s. 53 of that Act the provisions of the Corrupt Practices Prevention Act, 1854, with reference to the costs of prosecutions under that Act were made applicable to prosecutions under the Act of 1883. These provisions have now been repealed by the Costs in Criminal Cases Act, 1908, *post*, and are replaced by the provisions of s. 6 of that Act. These substituted provisions, however, are (probably by an oversight) not made applicable to the costs of prosecutions under the Act of 1884, and it appears that the provisions of the Act of 1854, which were incorporated by s. 53 of the Act of 1883 and are set out in the note to that section, *ante*, p. 359, are still applicable to such prosecutions. See *Reg.* v. *Law*, [1900] 1 Q. B. 605; 69 L. J. Q. B. 348; 82 L. T. 145; 48 W. R. 411; 19 Cox C. C. 452; 16 T. L. R. 199.

As to the institution of a prosecution before a court in an adjoining county, see *Reg.* v. *Riley*, *ante*, p. 396.

General Rules for the purposes of Part IV. of the Municipal Corporations Act, 1882, were formerly made by the judges on the rota for the trial of parliamentary petitions under s. 100 of that Act. They are now to be made by the same authority as the Rules of the Supreme Court (46 and 47 Vict. c. 51, s. 56, *ante*, p. 361). The rules now in force are set out, *ante*, p. 365.

Persons incapacitated by conviction or report to vacate seat or office.

31. If any person, in consequence of conviction or of the report of an Election Court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date.

For the definitions of the expressions "public office" and "judicial office," see 46 & 47 Vict. c. 51, s. 64, *ante*, p. 363.

Payment and recovery of costs.

32.—(1.) Where any costs of a petition are, under an order of a municipal Election Court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate.

(2.) Where any costs or other sums are, under the order of an Election Court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

As to an order for payment of the costs of a petition by the borough, see s. 29, *ante*.

Service of notices.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any Election Court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such Court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any Court, in such other manner as the Court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

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Definitions.

45 & 46 Vict. c. 50.

46 & 47 Vict. c. 51.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883, except that the words "borough," "election petition," "Election Court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.

See the definitions contained in ss. 7 and 77 of the Municipal Corporations Act, 1882, *ante*, pp. 3 and 69, and in 46 & 47 Vict. c. 51, s. 64.

Application to city of London of Act and of Part IV. of 45 & 46 Vict. c. 50.

35. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the city of London, subject as follows:—

(1.) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city:

(2.) The expression "burgess" means, in relation to each municipal election, any person entitled to vote at such election:

(3.) Any costs or expenses directed to be paid out of the borough fund or borough rate shall, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case shall be paid by the chamberlain of the said city out of the city's cash:

* * * * *

(5.) A vacancy in any office created by the decision of an Election Court shall be filled by a new election, and every summoning officer is hereby authorised and required to summon the electors for such election:

(6.) In the case of an election of an alderman and common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by this Act for the election of a councillor.

(7.) In the case of an election by liverymen in common hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding forty pounds, and, if a poll be demanded, then not exceeding two hundred and fifty pounds, and, in the event of a poll being demanded, such poll shall take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll shall take place on the fourth day, and the poll shall last for one day only, and commence at the hour of eight in the morning and close at six in the evening.

(8.) The town clerk shall send the corrupt and illegal practices list, when made out by him, to the ward clerk of each ward not less

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than fourteen days before the day on which the list of persons entitled to vote in such ward is required to be made out, and the aldermen and common councilmen of each ward shall omit from such last-mentioned list the names of all persons mentioned in the corrupt and illegal practices list, and the corrupt and illegal practices list shall be printed and appended to every copy of the list of persons entitled to vote in such ward.

As to the hours of poll, see now 48 & 49 Vict. c. 10, cited in note (*b*) to s. 58 of the Municipal Corporations Act, 1882, *ante*, p. 61.

Application of Act to other Elections.

Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections.

36.—(1.) Subject as hereinafter mentioned, the provisions of this Act and of Part Four of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to elections for the offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election:

(a) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(b) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union, and "a municipal election" shall mean an election to such office, and the expressions "municipal Election Court," "municipal election list," and "municipal election petition," shall be construed accordingly.

(c) No corrupt and illegal practices list shall be made for any such election.

(d) Vacancies created by the decision of an Election Court shall be filled by a new election.

(e) A petition relating to the election of a guardian of a union may be tried at any place within the union.

(f) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district or in the Metropolis;

(g) Where the poll at any election to an office in the said schedule is taken by means of voting papers, such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall not apply; but any offence in relation to voting papers or to personation or to voting at such election which is punishable on summary conviction (that is to say,) the offences mentioned in section three of the Poor Law Amendment Act, 1851, and in rule sixty-nine of Schedule Two to the Public

14 & 15 Vict. c. 105.

Health Act, 1875, shall, without prejudice to the punishment under such section and rule of a person guilty of such offence, be deemed to be an illegal practice within the meaning of the said provisions. Section 36. 38 & 39 Vict. c. 55.

(h) * * * * *

Clause (h), which related to the powers of the Local Government Board to determine questions as to the election of guardians, has been repealed by s. 89 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

Sub-s. (2) of this section replaces the provisions contained in s. 92 (4) of the Municipal Corporations Act, 1882, which is repealed by s. 38 of this Act.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act. Exemption from provisions as to maximum expenses.

Repeal.

38. The Acts specified in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned. . . . Repeal of Acts.

Extent of Act.

40. This Act shall not extend to Scotland or Ireland.

41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer. Duration Act.

The Act has been continued in force from time to time by successive Expiring Laws Continuance Acts, and is now in force until the 31st December, 1910, by virtue of 9 Edw. 7, c. 46.

Schedule 1.

SCHEDULES.

FIRST SCHEDULE.

(See ss. 36 & 37, *ante*.)

ELECTIONS to which this Act extends.

In England.

Office.	Area.	Officer.	Rate.
Member of local board as defined by the Public Health Act, 1875.	Local Government district or ward of such district.	Clerk to the local board, or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement Commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the Metropolis.	Returning officer of school board.	The school fund.

SECOND SCHEDULE.

(See s. 38, *ante*.)

Enactments Repealed.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As to England.

33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section seventy-seven, from "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election." Section seventy-eight.

Schedule 2.

45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section seventy-nine. Section eighty. Section eighty-two. Section eighty-three. Section eighty-four. Section ninety-two, sub-section four, from " and those judges " down to the end of the sub-section. Section ninety-four, sub-sections five, six, seven, and eight. So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

THIRD SCHEDULE.

Part I.

(See s. 2, *ante*.)

Enactments defining Corrupt Practices. *Enactments defining the Offence of Bribery.*

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102, ss. 2 and 3.

Sect. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:— Bribery defined.

(1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Sect. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:— Bribery further defined.

(1.) Every voter who shall, before or during any election, directly or indirectly,

Schedule 3, Part I.

by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from * refraining or agreeing to refrain from voting at any election.

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

* *Sic.*

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 49.

Corrupt payment of rates to be punishable as bribery.

Sect. 49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Enactment defining the Offence of Personation.

The Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24.

Personation defined.

Sect. 24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

See the notes to this section, *ante*, p. 265.

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, ss. 1 and 2.

What is treating.

Sect. 1. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

What is undue influence.

Sect. 2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 77.

Definitions.

Sect. 77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election,

which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

Part II.

(See s. 23, *ante*.)

Enactments relating to Disqualification of Electors.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, ss. 37 and 38.

Prohibition of disqualified persons from voting. 35 & 36 Vict. c. 60. 45 & 46 Vict. c. 50.

Sect. 37. Every person who, in consequence of conviction or of the report of any Election Court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

Sect. 38.—(1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Court . . . to have been guilty, at an election, of any corrupt or illegal practice, the Court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

* * * * * * *

(5.) Every person who, after the commencement of this Act, is reported by any Election Court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty. . . .

(6.) Where a person who is a justice of the peace is reported by any Election Court . . . to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any Election Court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:—

(a) If it appears to the Court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the Court shall direct such conviction to be entered in the proper register of licenses:

(b) If it appears to an Election Court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such Court . . . (subject to the provisions of this

Schedule 3, Part II.

Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences:

(c) Where an entry is made in the register of licences of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * *

The Election Court is required to report in writing to the High Court the names of all persons proved to have been guilty of any corrupt or illegal practice or offence against Part IV. of the Municipal Corporations Act, 1882. See s. 93 (5) of that Act, *ante*, p. 78, and 47 & 48 Vict. c. 70, s. 8, *ante*, p. 381.

The High Court has no jurisdiction to set aside or amend a report made by an Election Court on the ground that the person reported was not given an opportunity of being heard as required by this section. *Preece* v. *Harding*, (1889) 24 Q. B. D. 110; 59 L. J. Q. B. 82; 61 L. T. 837; 38 W. R. 350; 6 T. L. R. 65.

An accused person can only be heard by himself and not by his counsel or solicitor under sub-s. (1). *Reg.* v. *Mansel Jones*, (1889) 23 Q. B. D. 29; 60 L. T. 860; 37 W. R. 508; 53 J. P. 739. See also *Reg.* v. *Mansel Jones*, (1894) 10 T. L. R. 515.

Sub-s. (5) does not apply to a person who is reported to have been guilty of a corrupt or illegal practice by his agents. *Morris* v. *Shrewsbury* (*Town Clerk*), [1909] 1 K. B. 342; 78 L. J. K. B. 234; 99 L. T. 964; 73 J. P. 28; 2 Smith, 123; 21 Cox C. C. 751; 7 L. G. R. 125.

FOURTH SCHEDULE.

(See s. 21 (3), *ante*.)

Form of Declaration by Candidate as to Expenses.

I , having been a candidate at the election of councillor for the borough [or ward] of , on the day of [and my agents] do hereby solemnly and sincerely declare that I have paid for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C.D.*

Signed and declared by the above-named declarant on the day of before me.

(Signed) *E.F.*
Justice of the Peace for

THE HONORARY FREEDOM OF BOROUGHS ACT, 1885.

(48 & 49 Vict. c. 29.)

An Act to enable Municipal Corporations to confer the Honorary Freedom of Boroughs upon persons of distinction.

[22nd July, 1885.]

Be it enacted, &c., as follows:

Power to admit persons of distinction as honorary freemen of boroughs.

1. Notwithstanding anything in the Municipal Corporations Act, 1882, or any other statute, to the contrary, the council of every borough may from time to time by the authority of not less than two-thirds of their number present and voting at a meeting of the council specially called for the purpose with notice of the object, admit to be honorary freemen of the borough persons of distinction and any persons who have rendered eminent services to the borough, provided that the admission of such persons to be freemen shall not confer the right of voting for any such borough in parliamentary or other elections, or of sharing in the benefit of any hereditaments, common lands, or public stock of such borough or the council thereof, or of any property held in whole or in part for any charitable use or trust.

As to stamp duty on the admission of freemen, see note (*b*) to s. 209 of the Municipal Corporations Act, 1882.

Definition. 45 & 46 Vict. c. 50.

2. In this Act "borough" and "municipal corporation" shall respectively have the same meaning as in the Municipal Corporations Act, 1882.

Short Title.

3. This Act may be cited for all purposes as the Honorary Freedom of Boroughs Act, 1885.

THE LOCAL LOANS SINKING FUNDS ACT, 1885.

(48 & 49 VICT. c. 30.)

An Act to amend the Local Loans Act, 1875, as regards the establishment of a Sinking Fund. [22nd July, 1885.]

38 & 39 Vict. c. 83.

WHEREAS it is expedient to amend the Local Loans Act, 1875, as regards the provision of sinking funds for the discharge of local loans:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Local Loans Sinking Funds Act, 1885.

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

* * * * *

Discharge of loans by sinking funds.

4. Notwithstanding anything contained in the Local Loans Act, 1875, every loan borrowed in manner provided by that Act may be discharged by the establishment of a sinking fund as therein mentioned, notwithstanding that a sinking fund may not have been prescribed by the special Act authorising the loan.

See s. 13 of the Local Loans Act, 1875 (38 & 39 Vict. c. 83), *ante*, p. 290.

THE COUNTY ELECTORS ACT, 1888.

(51 & 52 Vict. c. 10.)

An Act to provide for the Qualification and Registration of Electors for the purposes of Local Government in England and Wales.

[16th May, 1888.]

Whereas it is expedient to make provision with respect to the qualification and registration of electors of any representative bodies (in this Act referred to as "county authorities") which may be established under any Act of the present session of Parliament for the purposes of local government in counties in England:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction. 48 & 49 Vict. c. 15.

1. This Act may be cited as the County Electors Act, 1888.

The Registration Act, 1885, and the Parliamentary Registration Acts within the meaning of that Act, are in this Act referred to as the Registration of Electors Acts, and together with this Act may be cited as the Registration of Electors Acts, 1843 to 1888.

This Act shall be construed as one with the Registration of Electors Acts.

Extension of burgess franchise to county electors outside municipal boroughs. 45 & 46 Vict. c. 50.

2.—(1.) For the purpose of the election of county authorities in England, the burgess qualification, that is to say, the qualification enacted by section nine of the Municipal Corporations Act, 1882, shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification, shall be entitled to be registered under this Act as a county elector in the parish in which the qualifying property is situate.

(2.) Sections nine, thirty-one, thirty-three, and sixty-three of the Municipal Corporations Act, 1882, and any enactments of that or any other Act affecting the same, shall extend to so much of every county as is not comprised within the limits of a municipal borough in like manner as if they were herein re-enacted, with the substitution of "county" for "borough" and of "county elector" for "burgess," and with the other necessary modifications.

See the notes to these sections, *ante*.

Occupation of land of

3. Every person who is entitled to be registered as a voter in respect fo a ten pounds occupation qualification within the meaning of the

Section 3. provisions of the Registration Act, 1885, which are set out in the schedule to this Act, shall be entitled to be registered as a county elector, and to be enrolled as a burgess, in respect of such qualification, in like manner in all respects as if the sections of the Municipal Corporations Act, 1882, relating to a burgess qualification included the said ten pounds occupation qualification.

the value of £10 to qualify.

See note (*b*) to s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 7.

Registration of county electors. 41 & 42 Vict. c. 26.

4.—(1.) The Registration of Electors Acts shall, so far as circumstances admit, apply to the enrolment of burgesses in a municipal borough to which the Parliamentary and Municipal Registration Act, 1878, does not apply, and to the registration of county electors within the meaning of this Act; and the lists of burgesses, and of county electors, and of occupation voters for parliamentary elections, shall, so far as practicable, be made out and revised together; and the Registration of Electors Acts shall accordingly—

(a) apply to every such municipal borough in like manner as if it were a borough to which sub-section two of section six of the Registration Act, 1885, applied (sub-section one of which section is hereby repealed), and revising assessors for such borough shall not be elected; and

(b) apply to every parish not situate in a municipal borough, in like manner as if such parish were a municipal borough to which the Parliamentary and Municipal Registration Act, 1878, applies, and the said lists of county electors and of occupation voters for parliamentary elections in such parish shall be made out in divisions, as provided in the said Act: Provided that a person whose name appears in any list of county electors or burgesses in a county may object to the name of any other person on a list of county electors or burgesses for a parish in that county, and may oppose the claim of a person to have his name inscribed in any such list.

See the note to s. 15 of the Parliamentary and Municipal Registration Act, 1878, *ante*, p. 334.

Section 6 (2) of the Registration Act, 1885 (48 & 49 Vict. c. 15), is as follows:—

"But where any part of the area of the said municipal borough was immediately before the dissolution of this present Parliament included in the area of a parliamentary borough, and such parliamentary borough ceased after such dissolution to be a parliamentary borough, then the registration of occupation voters and the enrolment of burgesses in a parish in such municipal borough shall be conducted in like manner, so nearly as may be, as heretofore, and the Parliamentary and Municipal Registration Act, 1878, shall apply to the said municipal borough in like manner as heretofore, subject nevertheless as follows:

"(a) 'Parliamentary county' shall, for the purpose of such application, be substituted for 'parliamentary borough.'

"(b) The lists and registers of voters shall be made out alphabetically in like manner as in the rest of the county, but the lists shall be framed in parts for polling districts and wards in such manner that the parts may be conveniently compiled or put together to serve as lists for polling districts or as ward lists.

"(c) The overseers of every parish in such municipal borough shall send to the clerk of the peace for the parliamentary county two copies of the lists of voters at the same time at which they send copies to the town clerk, and the lists of voters for a parish in such borough when revised shall be transmitted by the revising barrister to such clerk of the peace and dealt with by him as with other lists in his county,

but save as aforesaid the town clerk of the municipal borough shall until such transmission act as and be deemed to be the town clerk within the meaning of the Parliamentary Registration Acts and this Act in relation to such parish, and the clerk of the peace shall not act in relation to the registration of occupation voters in such parish.

"(d) The lists of occupation voters and burgesses shall be revised by the revising barrister for the parliamentary county in which the municipal borough is situate, and if that borough extends into more parliamentary counties than one, then by the revising barrister for the parliamentary county in which the greater part in extent of such municipal borough is situate, and such revising barrister shall hold a court in the municipal borough."

The clerk of the county council is now substituted for the clerk of the peace in this section by s. 83 of the Local Government Act, 1888.

(2.) In the construction of the Registration of Electors Acts for the purpose of their application to a parish not situate in a municipal borough, there shall be made the variations following, and such other variations as may be necessary for carrying into effect the application, that is to say :—

(a) Where such parish is not within a parliamentary borough, "parliamentary county" shall be substituted for "parliamentary borough";

(b) Where such parish is not within a parliamentary borough, the clerk of the peace shall perform the duties of and be substituted for the town clerk ; but any notice required to be given to the town clerk by section twenty-seven of the Parliamentary and Municipal Registration Act, 1878, relating to the withdrawal and revival of objections, shall be given to the overseers and not to the clerk of the peace ;

(c) County elector shall be substituted for burgess ;

(d) Section nine of the Parliamentary and Municipal Registration Act, 1878, shall not apply to any parish which is not wholly situate in an urban district ;

(e) Where such parish is not within a parliamentary borough, section twenty-one of the Parliamentary and Municipal Registration Act, 1878, shall not apply, and the lists and register of voters shall be made out alphabetically, but shall be framed in parts for polling districts and electoral divisions and for urban districts and for wards of urban and rural districts in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts, and elections in urban districts and as electoral division or ward lists ;

The provisions with respect to the framing of the lists and register of voters in parts are extended to parishes situate within a parliamentary borough by s. 76 (1) of the Local Government Act, 1888, *post*.

(f) Where such parish is within a parliamentary borough—

(i) the overseers shall send to the clerk of the peace for the county two copies of the lists of voters at the same time at which they send copies to the town clerk ; and

(ii) the town clerk shall cause to be printed such number of copies of the revised lists as the clerk of the peace may require, and shall transmit the same to the clerk of the peace, who shall deal with the same as with other lists of county electors in his county ; but,

Section 4.

(iii) save as aforesaid, the clerk of the peace shall not act in relation to the registration of county electors in the said parish, and the town clerk of the parliamentary borough shall be the town clerk within the meaning of the Registration of Electors Acts and this Act in relation to such parish, and shall include in his precept to the overseers proper directions respecting the registration of the county electors within the meaning of this Act.

(g) The lists of occupation voters and county electors shall be revised by the revising barrister for the parliamentary borough or county in which such parish is situate, and the revising barrister for revising the county electors lists for the whole or any part of an electoral division of any county shall, if so required by the county council, hold a court in that electoral division or at some convenient place in a division adjoining thereto.

(h) The guardians of a union which is not wholly comprised in an urban district may, with the consent of the overseers of any parish or parishes within their union for which an assistant overseer has not been appointed, annually appoint a fit person to act as registration officer for such parish or parishes, and may remove any such person, and fill up any vacancy caused by death, resignation, or otherwise. Such registration officer shall perform all the duties of overseers of the parish or parishes for which he is appointed in respect of the registration of county electors and parliamentary voters, and the provisions of the Registration of Electors Acts relating to overseers, including those providing for penalties, shall apply to him accordingly;

Provided that his remuneration shall be fixed and paid by the guardians of the union, and charged on the poor rates of the parish or parishes for which he is appointed, and (if he acts for more than one parish) in proportion to the number of persons on the registers made during the year of his appointment of county electors and parliamentary voters for each parish.

(3) Notwithstanding anything in this Act contained, where a municipal borough or an urban district is coextensive with any electoral division or divisions of a parliamentary county, the lists of voters may be directed by the county authority to be made out according to the order in which the qualifying premises appear in the rate book, and section twenty-one of the Parliamentary and Municipal Registration Act, 1878, shall apply to such borough or urban district, and where lists of voters are so made out nothing in this Act shall require such part of the county register as consists of these lists to be arranged alphabetically.

* * * * *

Revision of electoral lists.

6.—(1.) The lists of parliamentary voters, and of burgesses, and of county electors, shall be revised between the eighth day of September and the twelfth day of October both inclusive, and shall be revised as soon as possible after the seventh day of September, and the eighth day of September shall be substituted in the Acts relating to the registration of parliamentary voters for the fifteenth day of September; and the declarations under section ten of the County Voters Registration Act,

28 & 29 Vict. c. 36.

1865, and section twenty-four of the Parliamentary and Municipal Registration Act, 1878, shall be sent to the clerk of the peace or town clerk on or before the fifth day of September. Section 6. 41 & 42 Vict. c. 26.

* * * * *

Sub-s. (2) of this section, which related to the hearing of appeals from revising barristers, has been repealed by the Registration Act, 1908, and is replaced by the provisions of that Act, *post*, p. 663.

7.—(1.) The clerk of the peace of every county shall make up a register of all persons registered as burgesses or county electors in the county, both for the county and for each electoral division into which the county is divided for the purpose of election of the county authority, and such number of copies as the clerk of the peace may require of the list of burgesses as revised shall be delivered by the town clerk to such clerk of the peace for the purpose of making up such register. Roll of county electors.

(2.) The Registration of Electors Acts, and sections forty-five, forty-eight, and seventy-one of the Municipal Corporations Act, 1882, shall apply, for the purposes of this section, with the substitution of clerk of the peace for town clerk, and of county register and division register for burgess roll and ward roll respectively, and of electoral division for ward, and of county fund for borough fund. 45 & 46 Vict. c. 50.

* * * * *

(4.) Provided that nothing in this section shall prevent a county elector from being registered in more than one division register.

See the notes to s. 45 of the Municipal Corporations Act, 1882, *ante*.

(5.) Where in pursuance of section four of the Registration Act, 1885, the revising barrister has power to erase the name of any person as a parliamentary voter from division one of the occupiers list, such barrister, in lieu of erasing the name, shall place an asterisk or other mark against the name, and, in printing such lists, the name shall be numbered consecutively with the other names, but an asterisk or other mark shall be printed against the name, and a person against whose name such asterisk or other mark is placed shall not be entitled to vote in respect of such entry at a parliamentary election, but shall have the same right of voting at an election of a county authority as he would have if no such mark were placed against his name. 48 & 49 Vict. c. 15.

See now s. 44 (6) of the Local Government Act, 1894, *post*, as to the mode in which the names of the persons here referred to are to be marked.

* * * * *

8.—(1.) All expenses properly incurred and all sums received in carrying into effect the provisions of this Act and the Registration of Electors Acts with respect to county electors,— Expenses.

(a) if incurred or received by overseers, shall be respectively paid and applied as expenses and receipts of overseers under the Registration of Electors Acts in the case of the lists of parliamentary voters; and

(b) if incurred or received by the clerk of the peace or town clerk, shall be paid out of or into the county or borough fund; and such expenses shall include all proper and reasonable fees and charges

Section 8.

made and charged by him for the trouble, care, and attention of such clerk in the performance of the services and duties imposed on him by the said provisions.

See the note to s. 30 of the Parliamentary and Municipal Registration Act, 1878, *ante*, p. 341.

Remuneration of revising barristers and contribution by county authorities.

9. Every barrister appointed to revise any list of voters under the Parliamentary Voters Registration Act, 1843, shall be paid the sum of two hundred and fifty guineas by way of remuneration to him, and in satisfaction of his travelling and other expenses, and every such barrister, after the termination of his last sitting, shall forward his appointment to the Commissioners of Her Majesty's Treasury, who shall make an order for the payment of the above sum to every such barrister.

The maximum amount to be paid to an additional barrister in pursuance of the Revising Barristers Act, 1886, shall not exceed the amount authorised by this section to be paid to a revising barrister.

49 & 50 Vict. c. 42.

The sums so paid to a revising barrister or an assistant barrister shall be payable partly out of moneys provided by Parliament and partly by the county authorities, as herein-after mentioned.

(1.) There shall be annually paid by the county authority of every county out of the county fund into Her Majesty's Exchequer such sum as the Treasury certify to be one-half of the cost incurred for the payment of revising barristers at the then last revision of the lists of parliamentary electors, burgesses, and county electors in that county.

(2.) The Treasury shall yearly ascertain the total cost of the revising barristers appointed for all the counties and boroughs on any circuit, and shall divide one-half of such cost among the counties comprised in such circuit in proportion to the number of burgesses and county electors in each county, and certify the amount which under such apportionment is due under this section from each county. The Treasury may vary such certificate if they think fit, but unless it is so varied the certificate shall be final.

(3.) So much of any Act as requires a payment out of the borough fund of any borough to a revising barrister, in respect of the revision of the burgess lists, shall be repealed, without prejudice to any payment or liability previously made or incurred.

* * * * *

Separate list of persons residing within fifteen miles of county.

12. A list of persons occupying property in a county, and residing within fifteen miles, but more than seven miles from the county, shall be made out in accordance with section forty-nine of the Municipal Corporations Act, 1882, and that section shall apply as if it were herein re-enacted, with the substitution of "county" for "borough," and of "county elector" for "burgess," and of "clerk of the peace" for "town clerk."

See the notes to s. 49 of the Municipal Corporations Act, 1882, *ante*. This section does not apply to any person occupying property in a borough. Local Government Act, 1888, s. 76 (6), *post*.

* * * * *

Schedule.

SCHEDULE.

Registration Act, 1885.

Definition of Ten Pounds Occupation Qualification.

Ten pounds occupation qualification.

A person entitled to be registered as a voter in respect of a ten pounds occupation qualification in a borough, municipal or parliamentary—

(a) must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in a parish [or township] of the clear yearly value of not less than ten pounds; and

(b) must have resided in or within seven miles of the borough during six months immediately preceding the fifteenth day of July; and

(c) Such person, or some one else must during the said twelve months have been rated to all poor rates made in respect of such land or tenement; and

(d) All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January next before the registration, or on account of any assessed taxes due before the said fifth day of January, must have been paid on or before the twentieth day of July.

If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a voter.

If a person has occupied in the borough different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as a voter in the parish [or township] in which the last occupied land or tenement is situate.

THE LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

(51 & 52 VICT. c. 41.)

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.

[13th August, 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

COUNTY COUNCILS.

Constitution of County Council.

Establishment of county council.

1. A council shall be established in every administrative county as defined by this Act, and be entrusted with the management of the administrative and financial business of that county, and shall consist of the chairman, aldermen, and councillors.

Composition and election of council and position of chairman.

2.—(1.) The council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say :—

(2.) As respects the aldermen or councillors—

(a) clerks in holy orders and other ministers of religion shall not be disqualified for being elected and being aldermen or councillors ;

45 & 46 Vict. c. 50.

(b) a person shall be qualified to be an alderman or councillor who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county ;

(c) the aldermen shall be called county aldermen, and the councillors shall be called county councillors ; and a county alderman shall not, as such, vote in the election of a county alderman ;

(d) the county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election ; and

(e) the divisions of the county for the purpose of the election of county councillors shall be called electoral divisions and not wards, and one county councillor only shall be elected for each electoral division :

As to the qualification of borough councillors, see ss. 11 and 12 of the Municipal Corporations Act, 1882, *ante*; and as to their election see ss. 13 and 50—59 of that Act.

(3.) As respects the number of the county councillors, and the boundaries of the electoral divisions in every county—

(a) the number of the county councillors, and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine ; and

(b) any borough returning one councillor only shall be an electoral division ; and

(c) in the rest of the county the electoral divisions shall be such as in the case of a borough returning more than one councillor the council of the borough, and in the rest of the county the quarter sessions for the county, may determine, subject in either case to the directions enacted by this Act ; and in the case of elections after the first, to any alterations made, in accordance with the said directions, in manner in this Act mentioned :

(4.) As respects the electors of the county councillors—

the persons entitled to vote at their election shall be, in a borough, the burgesses enrolled in pursuance of the Municipal Corporations Act, 1882, and the Acts amending the same, and elsewhere the persons registered as county electors under the County Electors Act, 1888 : 45 & 46 Vict. c. 50. 51 & 52 Vict. c. 10.

See s. 9 of the Municipal Corporations Act, 1882, and ss. 2 and 3 of the County Electors Act, 1888, *ante*.

(5.) As respects the chairman of the county council—

(a) he shall be called chairman instead of mayor ; and

(b) he shall, by virtue of his office, be a justice of the peace for the county ; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace [*other than the oath respecting the qualification by estate.*]

See the notes to ss. 155 and 157 of the Municipal Corporations Act, 1882, *ante*.

(6.) The county council may from time to time appoint a member of the council to be vice-chairman, to hold office during the term of office of the chairman, and, subject to any rules made from time to time by the county council, anything authorised or required to be done by, to, or before the chairman may be done by, to, or before such vice-chairman.

See the note to s. 16 of the Municipal Corporations Act, 1882, *ante*.

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Part I. Section 15.

Powers of County Council.

* * * * *

Council to have power to oppose Bills in Parliament.

15. The county council of an administrative county shall have the same powers of opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county, as are conferred on the council of a municipal borough by the Act of the thirty-fifth and thirty-sixth years of Victoria, chapter ninety-one; and subject as herein-after provided the provisions of that Act shall extend to a county council as if such council were included in the expression "governing body," and the administrative county were the district in the said Act mentioned.

Provided that—

(a) No consent of owners and ratepayers shall be required for any proceedings under this section;

[(*b*) *This section shall not empower a county council to promote any Bill in Parliament, or to incur or charge any expense in relation thereto.*]

See the Borough Funds Act, 1872, and the notes thereto, *ante*, p. 282. County Councils are now empowered to promote bills by the County Councils (Bills in Parliament) Act, 1903, *post*, p. 628, and proviso (*b*) in this section is repealed by that Act.

Power of county council to make byelaws. 45 & 46 Vict. c. 50. 38 & 39 Vict. c. 55.

16.—(1.) A county council shall have the same power of making byelaws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making byelaws in relation to their borough under section twenty-three of the Municipal Corporations Act, 1882, and section one hundred and eighty-seven of the Public Health Act, 1875, shall apply to such byelaws:

(2.) Provided that byelaws made under the powers of this section shall not be of any force or effect within any borough.

See the notes to s. 23 of the Municipal Corporations Act, 1882, *ante*.

* * * * *

Financial Relations between Exchequer and County, and Contributions by County for Costs of Union Officers.

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Payments by county council in substitution for annual local grants out of Exchequer in aid of local rates.

4. Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will by reason of the duties on the local taxation licences and the probate duty grant being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows:—

(1.) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the thirty-first day of March next after the passing of this Act without prejudice to any right accrued before that day.

(2.) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county fund

and charge to the Exchequer Contribution Account the following sums, that is to say— Part I. Section 24.

* * * * *

(j) they shall, subject to the provisions of this Act, pay to the council of each borough maintaining a separate police force under the County and Borough Police Acts, one-half of the costs of the pay and clothing of the police of that borough during the preceding year; and

See the note to 53 & 54 Vict. c. 45, s. 25, *post*, p. 500.

The separate police forces in the smaller boroughs with a population under 10,000 in 1881 have been abolished by s. 39, *post*.

* * * * *

(4.) Where any payment towards the pay and clothing of the police of any town has been made in pursuance of section eighteen of the County and Borough Police Act, 1856, which authorises such payment to be made until the discontinuance of the police, the like payment shall, notwithstanding anything in this section, be made by the county council to the authority of such town until such discontinuance. 19 & 20 Vict. c. 69.

* * * * *

5. * * * * *

(2.) If a Secretary of State withholds, as respects the police of any borough, his certificate under the County and Borough Police Act, 1856, that the police of the borough has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth day of September then last past, no payment shall be made by the county council to the council of the borough in respect of one-half of the costs of the pay and clothing of the police of that borough during the said year, and such amount as a Secretary of State certifies to be in his opinion the equivalent of such one-half shall be transferred by the county council from the Exchequer Contribution Account to the general county account and applied to the general purposes of the county. 19 & 20 Vict. c. 69.

See s. 16 of the County and Borough Police Act, 1856, and the note thereto, *ante*, p. 243.

* * * * *

Part II.

Application of Act to Boroughs, the Metropolis, and certain Special Counties.

Application of Act to Boroughs.

Sections 31—39, which deal with the application of the Act to boroughs, do not apply equally to all boroughs, but their operation is limited in the following manner. Sections 31—34 apply exclusively to county boroughs; section 35 exclusively to the larger quarter sessions boroughs (not being county boroughs) with a population of 10,000 or upwards according to the census of 1881; section 36 deals with the application of the Act to boroughs (not being county boroughs) having a separate commission of the peace, whether quarter sessions boroughs or not; section 37 applies exclusively to quarter sessions boroughs (other than county boroughs) to be created

Part II. Section 31.

after the passing of the Act; section 38 exclusively to the smaller quarter sessions boroughs with a population under 10,000; and section 39 to boroughs, whether quarter sessions boroughs or not, with a population under 10,000. See the judgment of Rigby, L.J., in *Thetford Corporation* v. *Norfolk County Council*, *post*, p. 433.

Certain large boroughs named in the schedule to be county boroughs.

31. Each of the boroughs named in the Third Schedule to this Act being a borough which on the first day of June one thousand eight hundred and eighty-eight, either had a population of not less than fifty thousand, or was a county of itself shall, from and after the appointed day, be for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, and if a separate commission of assize, oyer and terminer, or gaol delivery is not directed to be executed within the borough, the borough shall, for the purposes of any such commission, and of the service of jurors, and the making of jury lists, be part of the county in which it is specified in the said schedule to be deemed for the purposes of this Act to be situate.

As to boroughs which are counties of themselves, see the note to s. 170 of the Municipal Corporations Act, 1882, *ante*, p. 125. Besides the boroughs mentioned in Schedule 3, any borough with a population of 50,000 may be constituted a county borough by a provisional order made under s. 54, *post*. A list of county boroughs which have been so constituted since this Act was passed will be found in the note to Schedule 3, *post*.

The expressions "borough" and "administrative county" are defined by s. 100, *post*.

As to the application of the Act to county boroughs, see s. 34.

Adjustment of financial relations between counties and county boroughs.

32.—(1.) An equitable adjustment respecting the distribution of the proceeds of the local taxation licences, and probate duty grant, and respecting all other financial relations, if any, between each county, and each county borough specified in the said schedule as being deemed for the purposes of this Act to be situate in that county, shall be made by agreement, within twelve months after the appointed day, between the councils of each county and each borough, and in default of any such agreement, by the Commissioners appointed under this Act; and such adjustment shall provide, in the case of any expenses which may in future be incurred by the county wholly or partly on behalf of the borough for the liability of such borough to contribute, and save as provided by this Act, any existing liability to contribute or to incur expense shall, after the appointed day, cease, and an equitable provision for such cessation shall be made in the adjustment.

The councils of county boroughs are entitled to receive payments from the Local Taxation Account in the same way as county councils (section 34, *post*).

The adjustment required by this section was made by the Commissioners appointed under s. 61 of this Act. The principles upon which the adjustment was made are stated in their report dated August 15th, 1892.

Where a new county borough was constituted by an order made under s. 54, *post*, it was held that the principle of the Caterham case, *post*, p. 442, applied, and that neither of the councils concerned was entitled to receive any compensation for the loss of a contributing area or for the cessation of any existing liability to contribute. Sub-section (3) does not mean that the entire financial position of the county and the county borough is to remain the same relatively to each other, but that it is

to be so as regards the distribution of the Exchequer contributions. *West Hartlepool Corporation* v. *Durham County Council*, [1907] A. C. 246; 76 L. J. K. B. 859; 97 L. T. 114; 71 J. P. 385; 5 L. G. R. 854; 23 T. L. R. 576.

(2.) Where a county borough is specified in the said schedule as being deemed for the purposes of this Act to be situate in more than one county, the necessary adjustment shall be made between the counties.

(3.) In such adjustment regard shall be had to the existing property, debts, and liabilities (if any) connected with the financial relations of the county and borough, and to the consideration that the county is not to be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs, and that a county borough is not to be placed in a worse financial position than it would have been in if it had remained part of the county and had shared in the division of the sums received by a county in respect of the licence duties and the probate duty grant, as provided by this Act, and to the amount of benefit and value of the services which the borough receives in return for existing contributions, if any, and to all the circumstances of each case which it appears equitable to consider, subject nevertheless to the following provisions :—

(a) Where separate commissions of assize, oyer and terminer, and gaol delivery are not directed to be executed in a county borough, the borough council shall contribute a proper share of the costs of and incidental to the assizes of the county (*a*) :

(b) If the borough is not at the passing of this Act a quarter sessions borough, the borough council shall contribute a proper share of the costs of and incidental to the quarter sessions and petty sessions of the county (*a*), and of and incidental to the coroners of the county or any franchise therein, and if a grant of a court of quarter sessions is hereafter made to the borough, the borough shall redeem the liability to such contribution, on such terms as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act (*b*) :

(c) * * * * * (*c*)

(d) Each county borough shall be liable for the maintenance of pauper lunatics in like manner as any other county.

(*a*) As to what is included in the costs of assizes and of quarter and petty sessions, see s. 100, *post*. Where a county borough (Coventry), which had a separate commission of the peace but not a separate court of quarter sessions, paid a fixed contribution in pursuance of an adjustment made under this section towards the expenses of the county incurred in part on behalf of the borough, including the costs of quarter sessions, it was held that the costs of licensing justices of the borough as respondents to a successful appeal to quarter sessions were costs of quarter sessions within the meaning of this section, and were payable by the treasurer of the county under s. 29 of the Alehouse Act, 1828 (9 Geo. 4, c. 61), and not by the borough treasurer. *R.* v. *Warwickshire Justices*, [1902] 2 K. B. 101; 71 L. J. K. B. 505; 86 L. T. 568; 18 T. L. R. 492.

(*b*) As to the appointment of coroners, see the note to s. 171 of the Municipal Corporations Act, 1882, *ante*, p. 125.

The provisions of this Act relating to arbitration are contained in s. 62, *post*.

(*c*) Clause (c) of this sub-section has been repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), and is now replaced by s. 244 of that Act, which provides as follows :—

Part II. Section 32.

"(1.) Where a county borough has contributed to the cost of building and furnishing a county asylum, the existing liability of the borough council shall continue until a new arrangement is made under this section, and the county council shall provide accommodation for and maintain pauper lunatics sent from the borough on the same terms as hitherto.

"(2.) Any new arrangement may be made between the county council and all the borough councils concerned, with respect to any such asylum; and if any such new arrangement is made, the borough and county councils may carry into effect any adjustment of property, debts, and liabilities which is the subject of such arrangement. If any council desires to make a new arrangement, and any or all of the other councils refuse to agree to the same, the matter shall be referred to the Commissioners under the Local Government Act, 1888, or, after they have ceased to hold office, to arbitration under that Act."

(4.) In the adjustment of any financial relations other than the distribution of the proceeds of the licences and probate duty grant, no borough wholly or partially exempt from contributing to any object shall be rendered liable so to contribute or to contribute in greater proportion than at present.

See ss. 150—152 of the Municipal Corporations Act, 1882, *ante*, p. 113.

(5.) The provisions of Part III. of this Act with respect to the adjustment of property, income, debts, liabilities, and expenses, and to borrowing for the purpose shall apply as if the Commissioners under this Act were the arbitrator in that Part mentioned.

See s. 62, *post*, and the notes thereto.

(6.) Provided that at any time after the end of five years from the date of an agreement or award adjusting the financial relations of any county and borough, if the council of either the county or borough satisfy the Local Government Board that the adjustment has become inequitable, and that the councils are unable to agree on a new adjustment, the board shall appoint an arbitrator; and such arbitrator shall proceed to make a new equitable adjustment as if he were the Commissioners under this Act, and the provisions of this Act shall apply accordingly. Any new adjustment made by agreement, or by the award of an arbitrator under this section, may, after the expiration of five years from the date of such agreement or award, be altered either by agreement or by arbitration as above mentioned.

(7.) Until any adjustment in pursuance of this section has come into operation, the county or borough council shall pay out of the county or borough fund to the borough or county council, as the case may be, the average annual amount which during the three years next before the appointed day has been expended by the county for the benefit of the borough, or contributed by the borough to the county, as the case may be, but any sum so paid shall be taken into account in the making of the adjustment, and the adjustment shall be made so as to take effect as from the appointed day.

(8.) Any contribution by a county borough to the county in pursuance of this section shall be required and made in accordance with section one hundred and fifty-three of the Municipal Corporations Act, 1882, and that section, except so far as relates to the appointment of an arbitrator, shall apply in like manner as if every such borough were a quarter sessions borough situate in the county.

(9.) Expressions in this section relating to contributions by a borough to a county shall be construed to include any sum raised by the assessment of the parishes or hereditaments in the borough to the county rate.

Provisions as to police and rateable value in county boroughs.

33.—(1.) Nothing in this Act with respect to county boroughs shall prevent the continuance of one police force for any county borough and any county, or the consolidation of the police forces of any county borough and any county in like manner as heretofore, but where the provisions of this Act affect the arrangement with respect to the consolidated police force for a county and borough, an adjustment shall be made between the council of the borough and county in accordance with the provisions of this Act. The foregoing provisions of this section shall apply to boroughs which are not county boroughs in like manner as if they were re-enacted and in terms made applicable to those boroughs.

As to boroughs which have no separate police force, see note (*a*) to s. 191 of the Municipal Corporations Act, 1882, *ante*, p. 134; and as to the consolidation of the borough and the county police, see 3 & 4 Vict. c. 88, s. 14; 19 & 20 Vict. c. 69, ss. 5 and 20, *ante*, pp. 215, 241, 244.

(2.) Where, for the purpose of calculating any contribution or payment to be made under this Act, it is necessary to ascertain the rateable value of both a county and a county borough, such rateable value shall be ascertained and fixed by a joint committee composed of representatives of all the councils concerned, and such committee shall for that purpose have all the powers and jurisdiction of quarter sessions and of a committee of justices appointed under the County Rate Act, 1852, and the Acts amending the same, and the number of representatives for the county and each county borough respectively shall be settled by agreement, or in default of agreement by the Local Government Board.

15 & 16 Vict. c. 81.

The provisions of this sub-section are not affected by the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), and the payments are still to be made in proportion to the rateable value of the county and the county borough and not in proportion to their assessable value as defined by that Act. *Lancashire Asylums Board* v. *Manchester Corporation*, [1900] 1 Q. B. 458; 69 L. J. Q. B. 234; 82 L. T. 1; 48 W. R. 356; 64 J. P. 101; 16 T. L. R. 145.

The right of appeal to quarter sessions against the county rate basis is not affected by this section, but no right of appeal is given against the decision of the joint committee under this section. *Reg.* v. *Lancashire Justices*, (1899) 15 T. L. R. 198.

Application of Act with modifications to county boroughs.

34.—(1.) The mayor, aldermen, and burgesses of each county borough acting by the council shall, subject as in this Act mentioned, have and be subject to all the powers, duties, and liabilities of a county council under this Act (in so far as they are not already in possession of or subject to the same), and in particular shall, subject to the provisions of this Act as to adjustment between counties and county boroughs, be entitled to receive the like sums out of the Local Taxation Account, and be bound to make the like payments in substitution for local grants and the like grants in respect of the costs of the officers of unions and of district schools as in the case of a county council, so far as the circumstances make such payments applicable, and all the provisions of this Act (including those with respect to the forfeiture on the withholding by a Secretary of State of his certificate as respects the police

Part II. Section 34.

of the county) shall accordingly, so far as circumstances admit, apply in the case of every such borough, with the necessary modifications, and in particular with the following modifications :—

(a) The county borough shall be substituted for the county, and borough fund shall be substituted for county fund, and town clerk shall be substituted for clerk of the peace and clerk of the council :

(b) A reference to two or more counties shall include a reference to county boroughs as well as counties :

(c) Such powers, duties, and liabilities of the court of quarter sessions or justices as in the case of a county are transferred to the county council shall be transferred to the council of the county borough, whether the same are vested in or attached to the court of quarter sessions or justices of the borough or of the county in which the borough is situate :

(d) In the case of the duties collected by the Commissioners of Inland Revenue in respect of the licences for trade carts, locomotives, horses, mules, and horse dealers under any Act of the present session, those Commissioners shall certify the amount collected in each county in like manner as if the county included each county borough specified in the Third Schedule to this Act as deemed to be situate in that county, and the amount as so ascertained shall be divided between the said boroughs and the residue of the said county in proportion to rateable value as fixed by the joint committee in pursuance of this Act, and until such value is fixed in proportion to rateable value according to the standard or basis for county contributions for the time being, and the share so ascertained shall be paid in like manner as if it had been collected in the county borough or in the residue of the county, as the case may be :

(e) Any sum standing to the Exchequer contribution account of a county borough which remains after payment of the grant required to be made in respect of the costs of union officers shall be carried to the borough fund, or be applied in aid of such rate leviable over the whole of the borough as the council may determine, and the provisions respecting the payment of the same to the general county account of the county fund, and the subsequent application and division thereof, shall not apply.

Further powers are conferred upon the councils of county boroughs by various sections of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*. By s. 75 of that Act the expression "county council" in that Act includes the council of a county borough unless the context otherwise requires.

(2.) On the appointed day there shall be transferred to the mayor, aldermen, and burgesses of each county borough all such bridges and approaches thereto, or parts thereof, situate within the borough as were previously repairable by the county or any hundred therein, and the costs of the council in repairing such bridges and approaches, or parts thereof, and in repairing any roads in the borough which by virtue of

this Act or any Act applied by this Act are main roads, shall be payable out of the borough fund.

As to the liability to repair bridges, see the note to s. 119 of the Municipal Corporations Act, 1882, *ante*, p. 95.

(3.) The provisions of this Act with respect to—

(a) the constitution, election, proceedings, or position of the county council or the chairman thereof,

(b) the county treasurer, county surveyor, and other county officers,

(c) the standing joint committee of the justices and the council, or

(d) coroners, or

(e) gas meters, or

(f) the transfer to the council of powers relating to county and other rates, and the preparation or revision of the basis or standard for the county rate;

shall not apply to county boroughs, nor shall Part IV. of this Act relating to finance apply, save so far as is expressly provided in that Part.

The constitution, &c., of a county borough council and the appointment and duties of their officers are regulated by the Municipal Corporations Act, 1882. The functions of the standing joint committee are discharged in a borough by the town council or by the watch committee.

As regards coroners, see the note to s. 171 of the Municipal Corporations Act, 1882, *ante*, p. 125.

For the Acts relating to gas meters, see the note to s. 39 (1), *post*.

(4.) Provided that where the district of any county coroner is wholly situate within a county borough, the coroner for that district shall be appointed by the council of that borough, and the writ for his election may be issued to that council instead of to the county council, and where the district of any county coroner is situate partly within and partly without a county borough, the writ for the election of such coroner shall be issued to the county council, but if there is a joint committee of the county and borough councils for the purpose, the question of the person to be elected shall be referred to that joint committee, and the county council shall appoint the person recommended by the majority of such committee.

See the note to s. 171 of the Municipal Corporations Act, 1882, *ante*, p. 125.

(5.) If the council of a county borough so require, a joint committee shall from time to time be appointed for the purposes of coroners, consisting of such number of members of the county and borough councils as may be agreed upon, or in default of agreement may be determined by a Secretary of State.

(6.) Nothing in this Act shall transfer to the council of any borough any power in relation to the division of the county into polling districts for the purpose of a parliamentary election for the county, the appointment of places of election for the county, the places of holding courts for the revision of the lists of voters, and the costs of, and other matters to be done for, the registration of parliamentary voters for the county.

(7.) The powers and duties of the county authority under the Allotments Act, 1887, shall, as respects the borough, continue to be exercised and performed by the Local Government Board. 50 & 51 Vict. c. 48.

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As to the powers and duties of a county council in relation to allotments, see now Part II. of the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36). As to the application of that Part to county boroughs, see s. 37 of that Act.

45 & 46 Vict. c. 50.

(8.) This Act and the Municipal Corporations Act, 1882, shall be construed so as to give effect to the provisions of this section.

Application of Act to larger quarter sessions boroughs not county counties.*

* *Sic.*

35. In the case of a quarter sessions borough, not being one of the boroughs named in the Third Schedule to this Act, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, the following provisions shall, on and after the appointed day, apply :

This section applies only to the larger quarter sessions boroughs with a population of 10,000 or upwards in 1881. See the note to Part II., *ante*, p. 419.
The boroughs named in the Third Schedule are county boroughs.

(1.) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings herein-after contained, the borough shall form part of the county for the purposes of this Act, and the parishes in the borough shall, subject to the exemptions herein-after mentioned, be liable to be assessed to county contributions in like manner as the rest of the county.

The council of a borough are the local authority under various Acts, *e.g.*, the Explosives Act, 1875 (38 & 39 Vict. c. 17) ; the Petroleum Acts, 1871 to 1881 (34 & 35 Vict. c. 105 ; 42 & 43 Vict. c. 47 ; 44 & 45 Vict. c. 67) ; the Weights and Measures Acts, 1878 to 1904 (41 & 42 Vict. c. 49 ; 52 & 53 Vict. c. 21 ; 55 & 56 Vict. c. 18 ; 56 & 57 Vict. c. 19 ; 60 & 61 Vict. c. 46 ; 4 Edw. 7, c. 28). For the purposes of the Lunacy Acts the council of every administrative county and county borough, and the council of each of the boroughs specified in the Fourth Schedule to the Lunacy Act, 1890 (53 & 54 Vict. c. 5), are the local authority as defined by s. 240 of that Act. As to the powers of the council of a borough under the Acts relating to Reformatory and Industrial Schools, see the note to s. 38 (2), *post*.

(2.) Where such borough is at the passing of this Act exempt, in whole or in part, from contributing towards costs incurred for any purpose for which the quarter sessions of the county in which the borough is situate are authorised to incur cost the parishes in the borough shall not, save as in this Act expressly mentioned, be assessed by the county council to county contributions in respect of costs incurred for any such purpose, nor in the case of a partial exemption, be so assessed for any larger sum than such as will give effect to that exemption, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the justices of the borough, which will by virtue of this Act be exercised or discharged by the county council nor to any costs of or incidental to the assizes of the county.

This sub-section and sub-s. (5) take away in part, in the case of the larger quarter sessions boroughs, the exemption from liability to contribute to the county rate which was provided by s. 150 of the Municipal Corporations Act, 1882. See the note to that section, *ante*, p. 113.

A borough which has always repaired its own bridges, and was therefore at the time when this Act was passed exempt from liability to contribute to the repair of county bridges, is exempted by this sub-section from liability to contribute to the cost of bridges which have been taken over or erected by the county council since the Act was passed under the powers conferred upon them by s. 6. *Bury St. Edmunds Corporation* v. *West Suffolk County Council*, [1898] 2 Q. B. 246; 67 L. J. Q. B. 750; 78 L. T. 624; 62 J. P. 486; 14 T. L. R. 436. As to the liability to repair bridges, see note (*a*) to s. 119 of the Municipal Corporations Act, 1882, *ante*, p. 95.

As to the right of certain boroughs to be paid by the county council the amount of contributions made by the parishes within the borough towards the expenses of the county council under the Sale of Food and Drugs Acts, the Weights and Measures Acts, and the Diseases of Animals Act, 1894, see 56 & 57 Vict. c. 19, s. 1, and the note thereto, *post*, p. 535.

(3.) Notwithstanding the last enactment the borough shall, for the purposes of the provisions of the Highways and Locomotives (Amendment) Act, 1878, respecting main roads, form part of the county, and the costs of maintaining, repairing, improving, enlarging, or otherwise dealing with any main road in the borough shall be paid out of the county fund, and the payment of the costs incurred in the execution of the provisions of this Act with respect to main roads shall be a general county purpose for which the parishes of the borough may be assessed to county contributions: 41 & 42 Vict. c. 77.

(4.) Provided that—

(a) the borough shall be deemed to be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878; and the council of the borough shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making byelaws respecting locomotives, and authorising locomotives to be used on any road within the borough, save that if any difference is made by such byelaws or authority between any main road maintained by the county council and the other roads in the borough, such authority and byelaws shall require the approval of the county council; and 41 & 42 Vict. c. 77.

Quarter sessions boroughs were excluded from the definition of an "urban sanitary authority" in s. 38 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), and the provisions of that Act relating to main roads did not apply to such boroughs. Section 28 of that Act empowered the council of a quarter sessions borough to authorise the use of locomotives on highways in their borough under such conditions (if any) as to them might appear desirable; and s. 31 gave them power to make byelaws as to the hours during which locomotives were not to pass over the highways in their borough, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where they were satisfied that such use would be attended with danger to the public.

(b) the council of the borough shall have power as an urban authority to claim, in accordance with this Act, to retain the powers and duties of maintaining and repairing any main road in the borough; and

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Section 11, sub-s. (2), of this Act provides that any urban authority may within twelve months after the appointed day, or in case of a road in the district of such authority becoming a main road at any subsequent date, then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district of such authority, and thereupon they shall be entitled to retain the same, and for the purpose of the maintenance, repair, improvement, and enlargement of and other dealing with such road, shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them, and the council shall make to such authority an annual payment towards the costs of the maintenance and repair and reasonable improvement connected with the maintenance and repair of such road.

(c) the council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application and inquire whether such roads are or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse to make the declaration, the council of the borough may within a reasonable time after such refusal apply to the Local Government Board, and that Board shall have power, if after a local inquiry they think it just so to do, to make the said declaration, which shall have the same effect as if made by the county council.

(5.) The payment of the costs of assizes and sessions shall be a general county purpose for which the parishes in the borough may be assessed to county contributions, [*and all costs of prosecutions mentioned in section one hundred and sixty-nine of the Municipal Corporations Act*, 1882, *shall be paid out of the county fund.*]

45 & 46 Vict. c. 50.

See the note to sub-s. (2), *ante*.

As to the meaning of the expression "costs of assizes and sessions," see s. 100, *post*.

The provisions of this section apply only to the larger quarter sessions boroughs with a population of 10,000 or upwards in 1881. *Thetford Corporation* v. *Norfolk County Council*, *post*, p. 433.

The words in brackets have been repealed by the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), *post*, p. 654. See the note to s. 169 of the Municipal Corporations Act, 1882, *ante*.

(6.) The county councillors elected for an electoral division consisting wholly of such borough, or of some part of such borough, shall not act or vote in respect of any question arising before the county council as regards matters involving expenditure on account of which the parishes in the borough are not, for the time being, liable to be assessed equally with the rest of the county to county contributions.

(7.) The county council and the council of any such borough may agree for the cessation in whole or in part of any exemption under this section of the parishes in the borough from assessment to county contributions, in consideration either of payment by the county council of a capital sum, or of an annual payment, or of a transfer of property or liabilities, or of the county council undertaking in substitution for the

council of the borough any powers or duties, or partly for one consideration and partly for another, or in any other manner, according as may be determined.

(8.) A borough which is a county of a city or a county of a town shall, for the purposes of this section, be deemed to be situate in and form part of the county which it adjoins, or if it adjoins more than one county, then in and of the county of which it forms part for the purposes of parliamentary elections.

As to boroughs which are counties of themselves, see the note to s. 170 of the Municipal Corporations Act, 1882, *ante*, p. 125.

General application of Act to boroughs with separate commission of the peace.

36.—(1.) Where a borough has a separate commission of the peace, whether a quarter sessions borough or not (and is not a borough named in the Third Schedule to this Act), then, subject to the provisions of this Act, all such powers, duties, and liabilities of the court of quarter sessions or justices of the borough, as in the case of the county are by this Act transferred to the county council, shall cease, and the county council shall have those powers, duties, and liabilities within the area of the borough in like manner as in the rest of the county ;

The powers and duties of quarter sessions or justices here referred to include those which are transferred to the county council by s. 3 of this Act. Such powers and duties relate to administrative business as distinguished from judicial business, and the liability to pay the salaries of the recorder and the clerk of the peace and the clerk of the borough justices is not transferred by this section, because it was not before the passing of the Act a liability either of the quarter sessions or of the justices of the borough, but of the borough fund. *Thetford Corporation* v. *Norfolk County Council*, *post*, p. 433, per Rigby, L.J.

(2.) Provided that such powers, duties, or liabilities, so far as they are under the Acts relating to pauper lunatics, shall, save as otherwise provided by this Act, be transferred to the council of the borough and not to the county council, and the provisions of this Act with respect to the transfer to a county council shall apply with the necessary modifications to such transfer to the council of the borough.

The words "save as otherwise provided by this Act" refer to s. 38 (1), by which the powers and duties of the borough justices in relation to pauper lunatic asylums are transferred in the smaller quarter sessions boroughs to the county council.

The provision of pauper lunatic asylums is now regulated by Part IX. of the Lunacy Act, 1890 (53 & 54 Vict. c. 5). The following sections of that Part impose on the boroughs specified in the Fourth Schedule to that Act the obligation to provide such asylums :—

"238.—(1.) Every local authority, as defined by this Act, shall provide and maintain an asylum or asylums for the accommodation of pauper lunatics.

"(2.) Where the asylum accommodation of a local authority appears to the local authority to be insufficient, the local authority may supply the deficiency by exercising the powers by this Act conferred for providing asylum accommodation, or by rebuilding or enlarging any existing asylum.

"(3.) For the purpose of providing asylum accommodation a local authority may purchase any licensed or other houses and land.

"(4.) For the purpose of providing asylum accommodation a local authority not being a county council shall have the same powers as are by section sixty-five of the Local Government Act, 1888, conferred upon a county council.

"239. A local authority shall exercise the powers conferred by this Act for providing asylum accommodation by a visiting committee, subject, if the local

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authority thinks fit, to their directions as to which of the methods of providing asylum accommodation authorised by this Act shall be adopted.

"240. The council of every administrative county and county borough respectively constituted under the Local Government Act, 1888, and the council of each of the boroughs specified in the Fourth Schedule, or in the case of the city of London the common council, shall be a local authority for the purposes of this Act.

"241. A local authority may provide asylum accommodation for pauper and private patients, together or in separate asylums, and may provide separate asylums for idiots or patients suffering from any particular class of mental disorder.

"242.—(1.) For the purpose of providing asylum accommodation a local authority may do all or any of the following things:—

"(a) Provide and maintain an asylum alone;

"(b) Agree to unite in providing and maintaining a district asylum with any other local authority or local authorities.

"(c) Agree to unite with any other local authority or local authorities upon such terms as to payment and otherwise as may be thought proper for the joint use as a district asylum of any existing asylum, and, if they think fit, for the enlargement of the same.

"(2.) Where an agreement to unite has been entered into, an agreement for further union may be entered into between all or any of the local authorities concerned, and for all the purposes of this Act an agreement for further union shall be deemed to be an agreement to unite.

"(3.) An agreement to unite shall not be carried into effect without the approval of a Secretary of State.

"245.—(1.) Where any borough specified in the Fourth Schedule contributes to a county asylum, such borough shall, so long as it continues to contribute, be deemed to satisfy the requirements of this Act with respect to asylum accommodation.

"(2.) The council of the borough may resolve for the purpose of providing asylum accommodation to separate from the county to which it contributes.

"(3.) Notice of the resolution to separate shall be given to the clerk of the county council, and upon the expiration of six months from the date of the notice the council of the borough shall be subject to the obligations imposed by this Act of providing asylum accommodation.

"(4.) Notwithstanding a notice to separate, the council of the borough shall continue liable to contribute to the county asylum, until all the pauper lunatics therein belonging to the borough have been removed.

"246. Where any borough specified in the Fourth Schedule has contracted for the reception of the lunatics of the borough in the asylum of the county in which the borough is situate, the borough shall, on the determination of the contract, cease to be a local authority under this Act, and [*subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building and furnishing an asylum,*] shall be liable to contribute to the county rate of the county in respect of such lunatic asylum in like manner as the rest of the county."

The words in brackets in s. 246 have been repealed by s. 29 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65), ss. 13—15 of which provide as follows:—

"13.—(1.) Where under section two hundred and forty-six of the principal Act, a borough ceases to be a local authority under that Act, the borough shall for all purposes of that Act be annexed to and treated as part of the county in which the borough is situate, and if or so far as the borough has not contributed towards the expense of providing the asylum of the county, a sum to be paid by the borough towards the expenses already incurred in providing the asylum shall be fixed by agreement between the councils of the county and borough, or in default of agreement by an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by the Local Government Board. In fixing the sum to be paid by the borough, the borough shall be credited with any sums already contributed by the borough for lunacy purposes in excess of its legal liability; and the arbitrator shall take into consideration the amounts that may

have been paid by the borough for the reception or maintenance, in the asylum of the county, of the lunatics of the borough.

"(2.) Where a borough had before the passing of this Act by virtue of section eighty-six of the Local Government Act, 1888, and the determination of any contract, become liable to contribute to the county rate of the county in respect of a lunatic asylum, this section shall apply to such borough as if it had immediately after the passing of this Act ceased under section two hundred and forty-six of the principal Act, to be a local authority.

"14. Any question relating to lunatic asylums or the maintenance of lunatics arising between any local authorities under the principal Act and any boroughs not being local authorities under that Act, and any visiting committees or any two or more of such parties respectively, may be referred to an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by the Local Government Board.

"15. The provisions of sub-sections five, six, and seven of section sixty-two of the Local Government Act, 1888, shall apply to every sum by virtue of this Act agreed to be paid or awarded by an arbitrator as if such sum had been agreed to be paid or awarded under section 62 of the Local Government Act, 1888."

The boroughs specified in the Fourth Schedule to the Lunacy Act, 1890, the councils of which are local authorities under that Act, are as follows:—Barnstaple, Bedford, Berwick-on-Tweed, Bridgwater, Bury St. Edmunds, Cambridge, Colchester, Doncaster, [*Dover*], Grantham, Gravesend, Guildford, Hereford, King's Lynn, London (City of), [*Maidstone*], Newark, Newbury, Newcastle-under-Lyme, New Sarum, New Windsor, Penzance, Poole, Rochester, Scarborough, Shrewsbury, Tiverton, Warwick, Wenlock, and Winchester. The references to Dover and Maidstone have been repealed by s. 29 of the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

Application of Act to quarter sessions boroughs hereafter created.

37. The grant after the passing of this Act of a court of quarter sessions to any borough, not being a county borough, shall not affect the powers, duties, or liabilities of the county council as respects the area of that borough, nor exempt the parishes in the borough from being assessed to county contributions for any purpose to which such parishes were previously liable to be assessed, and shall not confer or impose on the mayor, aldermen, and burgesses, or the council of such borough, any powers, duties, or liabilities further than such as are necessary for establishing and maintaining the court of quarter sessions in the borough.

As to the grant of a separate court of quarter sessions for a borough, see s. 162 of the Municipal Corporations Act, 1882, *ante*, p. 120.

Application of Act to smaller quarter sessions boroughs with population under 10,000.

38. Where a borough having a separate court of quarter sessions contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, the following provisions shall after the appointed day apply:—

(1.) There shall be transferred to the county council the powers, duties, and liabilities of the council and justices of the borough as regards the provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics:

This section applies only to the smaller quarter sessions boroughs with a population under 10,000 in 1881. See the note to Part II., *ante*, p. 419.

As regards pauper lunatic asylums, see Part IX. (ss. 238—282) of the Lunacy Act, 1890 (53 & 54 Vict. c. 5). The sections which impose an obligation to provide such asylums are set out in the note to s. 36 (2), *ante*.

A pauper lunatic asylum was provided at the joint cost of two counties and a borough for their common use. By subsequent agreements three other boroughs

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situate in one of the counties became entitled to use the asylum, subject to the payment of annual rents to the treasurer of the asylum. Each of these three boroughs was a quarter sessions borough with a population under 10,000 in 1881. It was held that the liability of the boroughs under their agreements was transferred by this section to the county council of the county in which they were situate. *Re County Council of Salop*, (1891) 65 L. T. 416.

(2.) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(a) as regards coroners; and

(b) as regards the appointment of analysts under the Acts relating to the sale of food and drugs; and

(c) under the Acts relating to—

(i.) reformatory and industrial schools; and

(ii.) fish conservancy; and

(iii.) explosives; and

(d) under the Highways and Locomotives (Amendment) Act, 1878;

Provided that the transfer by this section—

(a) shall be subject to the provisions in this Act for the protection of existing officers and the continuance of existing contracts; and

(b) shall not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882:

The power to appoint a coroner was vested in the council of every quarter sessions borough by s. 171 of the Municipal Corporations Act, 1882. See the notes to that section, *ante*, p. 125. The smaller quarter sessions boroughs are now subject to the authority of the county coroners under sub-s. (5) of this section.

The town council of every borough having a separate court of quarter sessions, or a separate police establishment, was empowered by s. 10 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), to appoint analysts for the borough, subject to the approval of the Local Government Board. The appointment of a public analyst by every local authority entrusted with the execution of the laws relating to the sale of food and drugs is now made compulsory by s. 3 of the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51).

By the Acts relating to reformatory and industrial schools the council of a borough were empowered, as a prison authority within the definition contained in s. 5 of the Prison Act, 1865 (28 & 29 Vict. c. 126), to contract with the managers of any certified reformatory school for the reception therein of offenders in their borough, and, subject to certain restrictions, to undertake or to contribute towards the establishment or building, or enlargement, or rebuilding of such a school, or towards its management, or towards the support of the inmates, or towards the purchase of land for such a school (29 & 30 Vict. c. 117, ss. 27, 28; 35 & 36 Vict. c. 21, s. 4). Similar powers were given with respect to industrial schools by 29 & 30 Vict. c. 118, s. 12, and 35 & 36 Vict. c. 21, s. 7. Power to borrow money, with the approval of the Home Secretary, for the purpose of defraying or contributing towards the expense of altering, enlarging, rebuilding, establishing, building, or purchasing the site of any industrial or reformatory school, was given by 37 & 38 Vict. c. 47, s. 2. These Acts have been repealed by the Children Act, 1908 (8 Edw. 7, c. 67), and are now replaced by the provisions of Part IV. of that Act.

As to explosives, see the Explosives Act, 1875 (38 & 39 Vict. c. 17). By s. 67 of that Act the council of a borough which is not assessed to the county rate is the local authority for the purposes of the Act; and the council of a borough which is so assessed may become a local authority by an order of the Home Secretary made under s. 68.

As to the powers of the council of a quarter sessions borough under the Highways

and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), see the note to s. 35 (4), *ante*, p. 427.

The provisions as to existing officers and existing contracts are contained in ss. 118, 120, and 122.

(3.) The borough shall be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 : 41 & 42 Vict. c. 77.

(4.) The council of the borough may within two years after the passing of this Act, apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application, and inquire whether such roads are, or ought to be, main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse the declaration, the council of the borough may, within a reasonable time after such refusal, apply to the Local Government Board, and that Board, after a local inquiry, shall have power, if they think it just so to do, to make the said declaration, which shall have the same effect as if it had been made by the county council :

(5.) The area of the borough shall for the purposes of the above-mentioned Acts and all other administrative purposes of the county council be included in the county, as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions :

This sub-section takes away from the smaller quarter sessions boroughs the exemption from liability to contribute to the county rate which was provided by s. 150 of the Municipal Corporations Act, 1882. See the note to that section, *ante*, p. 113.

As to the coroners, see the note to sub-s. (2), *supra*.

The operation of this sub-section is limited to the administrative purposes mentioned. The judicial business of the borough is not affected, and the obligation to pay the salaries of the recorder and the clerk of the peace in the smaller quarter sessions boroughs remains with the borough council, and is not transferred to the county council. The provisions of s. 35 (5) do not apply to the smaller quarter sessions boroughs, but such boroughs can get rid of their obligation in the manner provided by sub-s. (7) of this section. *Thetford Corporation* v. *Norfolk County Council*, [1898] 2 Q. B. 468 ; 67 L. J. Q. B. 907 ; 79 L. T. 315 ; 47 W. R. 1 ; 62 J. P. 724 ; 14 T. L. R. 541 ; overruling *Ex parte Kent County Council and Town Council of Sandwich*, [1891] 1 Q. B. 389 ; 60 L. J. Q. B. 314 ; 64 L. T. 421 ; 7 T. L. R. 250.

(6.) Any property, debts, or liabilities of the county or of any borough affected by this or the next succeeding section (including the charge to be made for lunatics which but for this Act would have been maintainable by the borough) may be adjusted in manner provided by Part Three of this Act :

(7.) It shall be lawful for Her Majesty the Queen, on petition from

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the council of any borough to which this or the next succeeding section applies, by Order in Council, to revoke the grant of a court of quarter sessions to the borough, and by letters patent to revoke the grant of a commission of the peace for the borough, and to make such provision as to Her Majesty seems proper for the protection of interests existing at the date of the revocation, and after the date of the revocation all enactments and laws relating to courts of quarter sessions and justices and their jurisdiction shall apply, as if such court of quarter sessions or commission of the peace, as the case may be, did not exist:

It is to be observed that the power of petitioning for the revocation of a grant of a court of quarter sessions, or of a commission of the peace, is confined to the smaller boroughs with a population under 10,000 in 1881.

If the grant of a separate court of quarter sessions is revoked, the county justices will have concurrent jurisdiction in the borough with the borough justices. See the note to s. 154 of the Municipal Corporations Act, 1882, *ante*, p. 115.

(8.) A borough which is a county of a city or a county of a town shall, for the purposes of this and the next succeeding section, and if Her Majesty revokes the grant of a court of quarter sessions or a commission of the peace to such borough, then also for all purposes of quarter sessions and justices, be deemed to be situate in and form part of the county of which it forms part for the purpose of parliamentary elections:

As to boroughs which are counties of themselves, see the note to s. 170 of the Municipal Corporations Act, 1882, *ante*, p. 125.

(9.) Where this section applies to a cinque port it shall apply also to all the members thereof, and those members when not situate in a quarter sessions borough shall form part of the county for all purposes.

As to the Cinque Ports, see s. 248 of the Municipal Corporations Act, 1882, and the note thereto, *ante*, p. 162.

Application of Act to all boroughs with population under 10,000.

39.—(1.) Where a borough, whether with or without a separate court of quarter sessions, contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, then after the appointed day all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

(a) to the police force of the borough, or

(b) to the appointment of analysts under the Acts relating to the sale of foods and drugs, or

41 & 42 Vict. c. 74. 47 & 48 Vict. cc. 13, 47. 49 & 50 Vict. c. 32. 40 & 41 Vict. c. 68.

(c) to the execution of the Contagious Diseases (Animals) Acts, 1878 to 1886, or the Destructive Insects Act, 1877, or

(d) to gas meters, or

(e) to weights and measures, if the council exercise any jurisdiction in relation thereto,

shall cease, and, subject to the provisions of this Act as to the members of the police force holding office on the said day, the area of the borough shall for all purposes of the Acts relating to the county police force, or

other matters above in this section mentioned, form part of the county in like manner as if it were not a borough ; Part II. Section 39.

Boroughs to which this section applies cease to maintain a separate police force, and ss. 191 *et seq.* of the Municipal Corporations Act, 1882, *ante*, p. 134, which relate to the borough police force, no longer apply to them. The constables belonging to the police force of such boroughs when this Act was passed became county constables by virtue of s. 118 (16) of this Act, *post*, p. 456.

As to the appointment of analysts under the Sale of Food and Drugs Acts, see the note to s. 38 (2), *ante*.

The council of every borough were formerly the local authority for the execution of the Contagious Diseases (Animals) Acts, by virtue of s. 9 of the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74). That section, however, has been repealed by the consolidating Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), by s. 3 of which the local authority is now the borough council in boroughs other than those to which this section applies, and for the residue of each administrative county the county council.

By s. 4 of the Destructive Insects Act, 1877 (40 & 41 Vict. c. 68), the local authorities for the purposes of that Act were the local authorities under the Contagious Diseases (Animals) Act, 1869 (32 & 33 Vict. c. 96), which was subsequently repealed by the Contagious Diseases (Animals) Act, 1878. The latter Act has in turn been replaced by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), as already stated.

The local authority is liable to pay compensation under s. 3 of the Destructive Insects Act, 1877, where the removal or destruction of any crop has been directed by the Privy Council for the purpose of preventing the spreading of the Colorado beetle.

The Acts relating to gas meters are 22 & 23 Vict. c. 66, and 23 & 24 Vict. c. 146. The council of every borough, not being manufacturers or sellers of gas, were empowered to adopt the former Act within a limited period in the manner prescribed by s. 4 of that Act. In cases where the Act has not been so adopted, the authority for the execution of the Act is now the county council. The Act empowers the local authority to require the deposit of verified models of gasholders and to appoint inspectors for testing gas meters in the manner provided by the Act.

The Acts relating to weights and measures are 41 & 42 Vict. c. 49, *ante*, p. 346 ; 52 & 53 Vict. c. 21, *post*, p. 469 ; 55 & 56 Vict. c. 18, *post*, p. 516 ; 56 & 57 Vict. c. 19, *post*, p. 535 ; 60 & 61 Vict. c. 46 ; and 4 Edw. 7, c. 28, *post*, p. 636. By s. 50 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), *ante*, p. 349, the local authority for the execution of the law relating to weights and measures in a quarter sessions borough was the town council ; in other boroughs the town council were the local authority only if they so resolved and provided local standards and appointed inspectors, or if legal local standards had been provided and inspectors appointed by them before that Act was passed. The provisions of that section are no longer applicable to the smaller boroughs which are dealt with by the present section.

The Weights and Measures Act, 1893 (56 & 57 Vict. c. 19), contains the following provision for the relief of boroughs, not being county boroughs or quarter sessions boroughs, from contribution to the expenses incurred by the county council in the execution of these Acts :—

" 1. Where the mayor, aldermen, and burgesses of a borough, not being a county borough and not having a separate court of quarter sessions, were on the first day of January, one thousand eight hundred and ninety-three, the legally constituted local authority for the purposes of the Weights and Measures Acts, 1878 to 1892, or for the execution of the law relating to weights and measures under any local Act, they shall be paid by the county council of the county in which the borough is situate, once in every year, the proportionate amount contributed towards the expenses incurred by the county council in the execution of those Acts by the several parishes and parts of parishes within the borough, such proportion being calculated according to the values stated in the basis for county rates in force for the time being. Provided that when the amount received by a county council from the execution of those Acts is in excess of the expenditure thereupon, a proportionate part of such excess amount shall be deducted from any sum due to such borough

Part II. Section 39.

as a recoupment under the Contagious Diseases (Animals) Acts, or the Sale of Food and Drugs Acts respectively."

See the note to that section, *post*, p. 535.

(2.) Provided that nothing in this section shall transfer to the county council any powers, duties, or liabilities under section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886.

41 & 42 Vict. c. 74. 49 & 50 Vict. c. 32.

The sections here referred to relate to dairies, cowsheds, and milk-shops. For the purposes of those sections the local authority is the sanitary authority under the Public Health Acts. The effect of this sub-section is to preserve the powers of the borough council under those sections in the smaller boroughs.

(3.) The urban authority for any borough or town with such population as above in this section mentioned shall cease to be the local authority under the Acts relating to explosives, and the county council shall have the like authority under the said Acts in the said borough or town as they have in the rest of their county.

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PART III.

Boundaries.

* * * * *

Provisional order as respects boroughs and urban sanitary districts in same area.

52.—(1.) The Local Government Board shall make provisional orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with or is wholly or partly comprised in any urban sanitary district, and such order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of this Act, so, however, that in either case the order shall provide for the council of the borough becoming the district council, and the order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county; and if the population exceeds fifty thousand, the order may constitute the borough into a county borough, and make such provision as may be necessary for carrying this Act into effect as respect such county borough; and the provisions of this Act respecting county boroughs shall, subject to the provisions of the order, apply.

(2.) Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the order may provide for the appointment by such university or colleges of members on the district council.

(3.) A provisional order under this section shall not be of any effect until it is confirmed by Parliament.

Provisional orders have been made under this section with respect to the following places: Banbury (52 & 53 Vict. c. cxvi.); Blandford Forum (52 & 53 Vict. c. cxii.); Calne (52 & 53 Vict. c. xlvi.); Cambridge (52 & 53 Vict. c. cxvi.; see also 57 & 58

Vict. c. lx.); Chippenham (52 & 53 Vict. c. xlvi.); Faversham (52 & 53 Vict. c. clxxii.); Launceston (52 & 53 c. clxxii.); Lyme Regis (52 & 53 Vict. c. cxii.); Lymington (52 & 53 Vict. c. cxii.); Morpeth (52 & 53 Vict. c. cxii.); Oxford (52 & 53 Vict. c. xv., by which the city was constituted a county borough; see also 53 & 54 Vict. c. ccxxiii., and 59 & 60 Vict. c. cv.); St. Ives (Hunts) (52 & 53 Vict. c. clxxii.); Wenlock (52 & 53 Vict. c. xxii.).

Folkestone is partly within the local government district of Sandgate. See 18 & 19 Vict. c. cxlvii., s. 130.

Consideration of alterations of boundaries by county councils.

53.—(1.) Every report made by the Boundary Commissioners under the Local Government (Boundaries) Act, 1887, shall be laid before the council of any administrative county or county borough affected by that report.

(2.) It shall be the duty of the council to take into consideration such report, and to make such representations to the Local Government Board as they think expedient for adjusting the boundaries of their county, and of other areas of local government partly situate in their county, with a view of securing that no such area shall be situate in more than one county.

The Boundary Commissioners were appointed for the purpose of reporting as to the best method of adjusting or altering the boundaries of counties or other areas, and as to the administrative arrangements consequential on any such alteration. See also s. 36 (12) of the Local Government Act, 1894, *post*, p. 560.

Future alterations of boundaries.

54.—(1.) Whenever it is represented by the council of any county or borough to the Local Government Board—

(a) that the alteration of the boundary of any county or borough is desirable; or

(b) that the union, for all or any of the purposes of this Act, of a county borough with a county is desirable; or

(c) that the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable; or

(d) that it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough; or

(e) that the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable; or

(f) that the alteration of any area of local government partly situate in their county or borough is desirable,

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry, and may make an order for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division.

(2.) Provided that in default of such representation by the council of any county or borough before the first day of November one thousand eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such order as they may deem expedient.

(3.) Provided that if the order alters the boundary of a county

Part III. Section 54.

or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

(4.) Where such order alters the boundary of a borough, it may, as consequential upon such alteration, do all or any of the following things, increase or decrease the number of the wards in the borough, and alter the boundaries of such wards, and alter the apportionment of the number of councillors among the wards, and alter the total number of councillors, and in such case, make the proportionate alteration in the number of aldermen.

(5.) At any time before the appointed day, the Local Government Board may make an order in pursuance of this section without any such representation as in this section mentioned.

As to local inquiries, see s. 87, *post*. For a list of boroughs which have been constituted county boroughs under this section, see the note to the Third Schedule, *post*.

Section 36 (5) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 560, provides that where an alteration of the boundary of any borough seems expedient for any of the purposes mentioned in that section, application is to be made to the Local Government Board for an order under this section. See also s. 54 of that Act, *post*, p. 564, as to the provision to be made for any rural parish or part of a rural parish that is affected by the alteration of the boundary of a borough.

Contents of provisional order amalgamating two county boroughs.

55.—(1.) Where the Local Government Board make a Provisional Order for uniting two county boroughs, such Order may make them one borough and one county for the purposes of this Act.

(2.) Such Order, and also any other Order under this Act for uniting boroughs, whether county boroughs or not, may also contain such provisions as may seem necessary or proper for regulating the division of the combined borough into wards, the number of councillors to be elected for each ward, and the first election of the council of the combined borough, and for providing for the clerks of the peace, coroners, town clerks, and officers of the boroughs, and the application to them of the provisions of this Act as to existing officers, and for providing for all matters incidental to or consequential on the union of the boroughs.

(3.) When any such Provisional Order is confirmed, it shall be lawful for Her Majesty to grant a commission of the peace and court of quarter sessions to the combined borough in like manner as to any other borough under the Municipal Corporations Act, 1882, and the Provisional Order may contain such provisions as appear necessary or proper for regulating all matters incidental to such grant, and to the changes caused by the union of the boroughs in matters connected with such commission or court or otherwise with the administration of justice.

The orders referred to in this section may be made under s. 54. The provisional order must be confirmed by Parliament. Section 54 (3).

The provisions as to existing officers are contained in ss. 118—120.

As to the grant of a commission of the peace, see s. 156 of the Municipal Corporations Act, 1882, *ante*, p. 117; and as to the grant of a separate court of quarter sessions, see s. 162 of the Act of 1882 and s. 37 of this Act.

Procedure for charter of new borough.

56. Where a petition is presented to Her Majesty the Queen by the inhabitant householders of any town or towns or district, in pursuance of the Municipal Corporations Act, 1882, for the grant of a charter of incorporation, notice of such petition shall be given to the county council of the county in which such town, towns, or district is or are situate, and shall also be sent to the Local Government Board, and the Privy Council shall consider any representations made by such county council or the Local Government Board, together with the petition for such charter.

See ss. 210 *et seq.* of the Municipal Corporations Act, 1882, *ante*, p. 142.

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Supplemental provisions as to alteration of areas.

59.—(1.) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.

(2.) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes, whether sheriff, lieutenant, custos rotulorum, justices, militia, coroner, or other; Provided that—

(a) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and

(b) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and

(c) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(3.) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place.

51 & 52 Vict. c. 10.

(4.) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(a) may provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for

Part III. Section 59.

the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

(b) may make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and

(c) may provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and

(d) may provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and

(e) may adjust any property, debts, and liabilities affected by the scheme or order.

The expression "local authority," which is not defined in the Act, appears to be wide enough to include any authority which exercises jurisdiction in any part of the area to which the order applies. See the judgment of Wills, J., in *Re Buckinghamshire County Council and Hertfordshire County Council*, *post*, p. 442. A burial board has been held to be a local authority within the meaning of this sub-section. *Reg.* v. *Durham County Council*, Q. B. D. January 13th, 1897; Local Government Chronicle, 1897, p. 70.

Where an addition was made to an urban district by an order of the county council under s. 57 of this Act, it was held that the order did not empower the district council to supply water to the added area, which was within the limits of supply of an existing water company, and Lindley, L.J., doubted whether any such provision could have been inserted in the order under this section. *Huddersfield Corporation* v. *Ravensthorpe Urban District Council*, [1897] 2 Ch. 121; 66 L. J. Ch. 581; 76 L. T. 817; 45 W. R. 642; 61 J. P. 596; 13 T. L. R. 441.

The provisions of the Act as to existing officers are contained in ss. 118—120.

In so far as the order does not provide for the adjustment of any property, debts, or liabilities affected by it, such adjustment may be made by agreement under s. 62. See *Re Sowerby Urban District Council and Mytholmroyd Urban District Council*, (1896) 74 L. T. 313; 12 T. L. R. 300.

As to the meaning of "property" and "liabilities," see the definitions of these terms in s. 100, and see *Reg.* v. *Local Government Board*, [1901] 1 Q. B. 210; 70 L. J. K. B. 272; 82 L. T. 385; 49 W. R. 226; 65 J. P. 36; 17 T. L. R. 120. As to the construction of an order which added part of a rural district to a borough and transferred to the corporation the liability of the district council in respect of actions pending against them in relation exclusively to the added area, see *Jackson* v. *Plympton St. Mary Rural District Council*, W. N. 1900, p. 15; 64 J. P. 168. See also as to adjustment the cases cited in the notes to s. 32, *ante*, p. 420; s. 62 (1), *post*, p. 441; and s. 68 of the Local Government Act, 1894, *post*, p. 567.

(5.) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

(6.) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act.

A provisional order must be confirmed by Parliament. See s. 87, *post*.

As to what is a local and personal Act within the meaning of this sub-section, see *Reg.* v. *London County Council*, [1893] 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1; 58 J. P. 21; 9 T. L. R. 601.

General provision as to alteration of boundaries.

60. In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government.

* * * * *

Adjustment of property and liabilities.

62.—(1.) Any councils and other authorities affected by this Act or by any scheme, order, or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses, so far as affected by this Act or such scheme, order, or thing, of the parties to the agreement, and the agreement and any other agreement authorised by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the commissioners under this Act or the Local Government Board.

The adjustment of property, debts, and liabilities affected by a scheme or order may be provided for by the scheme or order itself under s. 59 (4). Where an order does not provide for such adjustment, the authorities affected may do so by agreement, and in default of agreement by arbitration under this section. See *Re Sowerby Urban District Council and Mytholmroyd Urban District Council*, *ante*, p. 440.

This section provides merely for the division of existing assets and liabilities, and does not give any right to compensation for the loss of any right to obtain income which is caused by a diminution of rateable area. Thus where a parish in a rural district was constituted a separate urban district by an order made under s. 57 of this

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Act, it was held that the loss occasioned to the rural district council by the fact that the parish ceased to be rated for the highway expenses of the rural district was not a matter for adjustment under this section. *Caterham Urban District Council* v. *Godstone Rural District Council*, [1904] A. C. 171; 73 L. J. K. B. 589; 90 L. T. 653; 52 W. R. 625; 68 J. P. 429; 2 L. G. R. 596; 20 T. L. R. 481; overruling the decisions on this point in *Re Buckinghamshire County Council and Hertfordshire County Council*, [1899] 1 Q. B. 515; 68 L. J. Q. B. 417; 80 L. T. 85; 63 J. P. 356; 15 T. L. R. 138; and *Re Rochdale Union and Haslingden Union*, [1899] 1 Q. B. 540; 68 L. J. Q. B. 531; 80 L. T. 146; 47 W. R. 322; 15 T. L. R. 223.

By a provisional order confirmed by Act of Parliament the urban district of C. was dissolved, and part of it was included in the borough of T., the remainder (called in the order the excluded part of C.) being transferred to the rural district of N. The order provided that all property and liabilities which immediately before the commencement of the order were vested in or attached to either of the urban councils in relation exclusively to any part of the added areas should be transferred to, vested in, and attach to the corporation as urban district council, and that any property and liabilities vested in or attached to either of the urban councils in relation to any part of the added areas conjointly with any other area should be a matter for adjustment under this section. It was held that the liability of the urban district council of C. for the costs of a firm of solicitors who had been retained by them to oppose the provisional order and the confirming bill in Parliament, was a liability attached to C. in relation to the added area (added to T.) conjointly with another area, viz., the excluded part of C. which was added to the rural district of N., and was therefore a matter for adjustment under this section. When adjusted, that share of the liability adjusted to the added area would become a liability attaching to that area exclusively, and was therefore transferred by the order to T.; and that share of the liability adjusted to the excluded part of C. would become a liability attaching to C. in relation exclusively to the excluded part of C. and was therefore transferred to the rural district council of N. *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601; 71 L. J. K. B. 109; 85 L. T. 785; 66 J. P. 293; 18 T. L. R. 139.

As to adjustment, reference may also be made to the cases cited in the notes to ss. 32 and 59 (4), *ante*, and to s. 68 of the Local Government Act, 1894, *post*. See also *Torquay Corporation* v. *Cockington Urban District Council*, (1900) 44 Sol. J. 760, as to adjustment of the costs incurred in connection with an order altering the boundaries of a borough.

(2.) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment or determining such difference is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

8 & 9 Vict. c. 18.

(3.) An arbitrator appointed under this Act shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and, further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

The provisions of the Land Clauses Acts relating to arbitration are 8 & 9 Vict. c. 18, ss. 23, 25—37; 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15.

Where an award under this section dealt with the costs of the award but was

silent as to those of the reference, it was held that the latter could not be recovered in an action. *South Mimms Rural District Council* v. *Barnet Urban District Council*, (1900) 82 L. T. 421.

(4.) Any award or order made by the Commissioners or any arbitrator under this Act may provide for any matter for which an agreement might have provided.

(5.) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund or out of such other special fund as the council, with the approval of the Commissioners under this Act or of the Local Government Board, may direct.

(6.) The payment of any capital sum required to be paid for the purposes of the adjustment or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow, and such sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

As to the borrowing powers of a borough council, see s. 106 of the Municipal Corporations Act, 1882, and the notes thereto, *ante*, p. 87. The functions of the Treasury with respect to such loans are transferred to the Local Government Board by s. 72 of this Act.

(7.) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Arbitration by Local Government Board. 31 & 32 Vict. c. 119.

63. Where the Local Government Board [*are required in pursuance of this Act to decide*] any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act.

The Local Government (Determination of Differences) Act, 1896 (59 & 60 Vict. c. 9), provides that this Act is to have effect as if the words "determine as arbitrators" were substituted in this section for the words "are required in pursuance of this Act to decide." That Act was passed in consequence of the decision in *Re Kent County Council and Sandgate Local Board*, [1895] 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. 725; 43 W. R. 601; 59 J. P. 456; 11 T. L. R. 421; where it was held that this section applied to cases where differences were required to be determined by

Part III. Section 63.

arbitration of the Local Government Board, and that s. 87 was confined to the case of differences which were to be determined by the Board otherwise than by arbitration. The effect of the amending Act is that the Board now have the option in such cases either of appointing an arbitrator under this section who can be compelled to state a case for the opinion of the High Court, or of deciding the matter themselves (not as arbitrators) under s. 87.

The provisions of the Regulation of Railways Act, 1868, here referred to are contained in ss. 30—32 of that Act (31 & 32 Vict. c. 119).

PART IV.

FINANCE.

Property Funds and Costs of County Council.

* * * * *

Audit of accounts of county council.

71.—(1.) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by this Act, and be in the form for the time being prescribed by the Local Government Board.

(2.) The provisions of the Municipal Corporations Act, 1882, with respect to the return to the Local Government Board of the accounts of a council of a borough and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof shall apply to the accounts of a county council, and of the treasurer and officers of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts.

See ss. 26—28 and 233 of the Municipal Corporations Act, 1882, *ante*.

(3.) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections two hundred and forty-seven and two hundred and fifty of the Public Health Act, 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the First Schedule to the District Auditors Act, 1879, shall be modified in manner described in the Second Schedule to this Act.

38 & 39 Vict. c. 55.

42 & 43 Vict. c. 6.

Adaptation of Part V. of 45 & 46 Vict. c. 50, as to corporate property and liabilities.

72. After the appointed day the Local Government Board shall exercise, as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities, as respects the approval of loans and of the alienation of property, and other matters therein mentioned, and that Part shall, as respects any transactions commenced after the

appointed day, be construed as if "Local Government Board" were throughout that Part substituted for "Treasury." Part IV. Section 72.

See ss. 105—132 of the Municipal Corporations Act, 1882, *ante*.

* * * * *

Part V.

Supplemental.

Application of Acts.

Application of 45 & 46 Vict. c. 50, to county councils and this Act. 47 & 48 Vict. c. 70.

75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely, Part Two, Part Three, Part Four (as amended by the Municipal Elections (Corrupt Practices) Act, 1884), section one hundred and twenty-four in Part Five, Part Twelve, Part Thirteen, the Second Schedule, Part Two and Part Three of the Third Schedule, and Part One of the Eighth Schedule shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same in such terms and with such modifications as are necessary to make them applicable to the said councils and their chairmen, members, committees, and officers, and to the other provisions of this Act.

Provided as follows :—

Sub-ss. (1), (6), (9), (13), and paragraph (d) of sub-s. (16) have been repealed by the County Councils (Elections) Act, 1891, and are replaced by the provisions contained in that Act, *post*, p. 512.

(1.) * * * * *

(2.) Such person as the county council may appoint shall be the returning officer for the election of county councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council.

In the case of an election for a borough division, the mayor or an alderman is to be the returning officer, but is to follow the instructions of the county returning officer. County Councils (Elections) Act, 1891, s. 3, *post*.

(3.) The returning officer, without prejudice to any other power, may by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any such councillor, and may by himself or such deputy exercise any powers and do any things which a returning officer is authorised or required to exercise or do in relation to such election, and shall for the purposes of the election have all the powers of the sheriff.

4.) A reference in this Act, or in the enactments applied by this Act, to the returning officer or to the mayor or to the alderman shall, so far as relates to the election of any such councillor, be construed to refer to the returning officer, and any such deputy as above mentioned.

Part V. Section 75.

(5.) A reference in the said enactments to the town clerk so far as respects the election of any such councillor shall be construed to refer to the returning officer or his deputy, and as respects matters subsequent to the election, shall be construed to refer to the clerk of the county council.

The first part of this sub-section does not apply where the election is held for a borough division. County Councils (Elections) Act, 1891, s. 3, *post.*

(6.) * * * * *

(7.) Some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town clerk's office, and, as respects the hearing of objections to nomination papers, for the town hall, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division.

See Sched. 3, Part II., of the Municipal Corporations Act, 1882, *ante.*

(8.) The returning officer shall forthwith after the election of county councillors for the county return the names of the persons elected to the clerk of the county council.

(9.) * * * * *

(10.) An outgoing alderman shall not as alderman vote in the election of a chairman.

See s. 61 (3) of the Municipal Corporations Act, 1882, *ante.*

43 & 49 Vict. c. 10.

(11.) The hours of the poll shall be those fixed by the Elections (Hours of Poll) Act, 1885.

See note (*b*) to s. 58 of the Municipal Corporations Act, 1882, *ante.*

(12.) Section eleven of the Municipal Corporations Act, 1882, with respect to the qualification of a county councillor by reason of his being entered in the separate non-resident list, shall include, for the purposes of this Act, all persons entered in such separate list in any municipal borough by reason of occupation of property in the borough, and all persons entered in such separate list for any part of a county not in a municipal borough by reason of the occupation of property in that part.

See the note to s. 49 of the Municipal Corporations Act, 1882, *ante.*

(13.) * * * * *

(14.) Ten days shall be substituted for five days in section thirty-four of the Municipal Corporations Act, 1882, as the time within which a person elected to a corporate office is to accept that office, and twelve months shall be substituted for six months in section thirty-nine of the said Act, as the period of absence which disqualifies an alderman or councillor.

The period of ten days fixed by this section has been extended to three months by s. 5 of the County Councils (Elections) Act, 1891, *post.*

(15.) The quorum of the council shall be one-fourth of the whole number of the council, and one-fourth shall, for the purposes

of this section, be substituted for one-third in paragraph ten of the second schedule to the Municipal Corporations Act, 1882.

(16.) Nothing in the Municipal Corporations Act, 1882, as applied by this section—

(a) shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner; or,

See s. 221 of the Municipal Corporations Act, 1882, *ante*.

(b) shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boundaries or the alteration of wards or borough auditors, nor any of the following provisions, namely, sub-section five of section fifteen, section sixteen, section two hundred and fifty-one, or section two hundred and fifty-seven; or

The provisions of the Act of 1882 relating to boundaries are contained in ss. 228 and 229; those relating to the alteration of wards in s. 30; and those relating to borough auditors in ss. 25, 27, and 62. Section 15 (5) relates to the precedence of the mayor; s. 16 to the appointment of the deputy mayor; and ss. 251 and 257 contain savings for local Acts and the Universities respectively.

(c) shall render any person elected to a corporate office without his consent to his nomination being previously obtained liable to pay a fine on non-acceptance of office, or render a chairman or deputy chairman disqualified as such by reason of absence; or

See ss. 34 and 39 of the Municipal Corporations Act, 1882, *ante*.

(d) * * * *

(e) shall apply to a county council section seventeen of the said Act with respect to the town clerk, nor, unless the county council so resolve, section eighteen respecting the treasurer, but, if the county council so resolve, section eighteen shall supersede the existing enactments with respect to the county treasurer; or,

(f) shall require the acts and proceedings of the standing joint committee of the county council and quarter sessions to be submitted to the county council for their approval; or

See s. 22 (2) of the Municipal Corporations Act, 1882, *ante*.

(g) shall prevent the use of schools and public rooms for the purpose of taking the poll at elections under this Act, but section six of the Ballot Act, 1872, shall apply in the case of elections under this Act, and the returning officer may, in addition to using such rooms free of charge for taking the poll, use the same free of charge for hearing objections to nomination papers and for counting votes. 35 & 36 Vict. c. 33.

See Sched. 3, Part III., r. 1, of the Municipal Corporations Act, 1882, *ante*.

Part V. Section 75.

(17.) All costs properly incurred in relation to the holding of elections of councillors of county councils, so far as not otherwise provided for by law, shall be paid out of the county fund as general expenses.

(18.) The said costs shall not exceed those allowed by Part I. of the First Schedule to the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act, 1885, or by such scale as the county council may from time to time frame.

38 & 39 Vict. c. 84. 48 & 49 Vict. c. 62.

(19.) Sections four, five, six, and seven of the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed, and of one month for the period of fourteen days within which application may be made for taxation.

49 & 50 Vict. c. 57.

(20.) A county council shall, on the request of the returning officer, prior to a poll being taken at any election of a councillor of such council, advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require.

(21.) The meeting of a county council, or of any committee thereof, may be held at such place either within or without their county, as the council from time to time direct.

Amendment of 51 & 52 Vict. c. 10.

76.—(1.) The provisions of section four of the County Electors Act, 1888, with respect to the framing of the lists and register of voters in parts shall extend to parishes situate within a parliamentary borough.

* * * * *

(3.) The names of the parliamentary electors and county electors in the lists in each polling district may be numbered consecutively, and such portion of those lists as consists of the names of parliamentary electors may be taken to form the register for the purpose of parliamentary elections, and such portion of those lists as contains the names of county electors may be taken to form the register of county electors.

* * * * *

51 & 52 Vict. c. 10.

(6.) It is hereby declared that nothing in section twelve of the County Electors Act, 1888, applies to any person occupying property within a borough.

The section here referred to provides for the separate non-resident list in a county.

(7.) It shall be lawful for Her Majesty the Queen, by Order in Council, from time to time to alter the instructions, precepts, notices, and forms under the Registration of Electors Acts, in such manner as appears to Her Majesty necessary for carrying into effect this Act and the County Electors Act, 1888, and any other Act for the time being in force amending or affecting the Acts mentioned in this sub-section, and the instructions, precepts, notices, and forms specified in any such Order in Council

shall be observed and be valid in law, and clerks of the peace, and town clerks, and other officers shall act accordingly. Part V. Section 76.

The forms which are now in force are contained in the Registration Order, 1895, *post*, p. 574.

* * * * *

77. A person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London, in all respects except that of residence, and is resident beyond seven miles but within fifteen miles of the county, shall be entitled to be registered as a county elector. Residential qualification of county electors in administrative county of London.

See the note to s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 18.

* * * * *

Proceedings of Councils and Committees.

79.—(1.) The council of each county shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without licence in mortmain. Incorporation of county council.

* * * * *

Officers.

* * * * *

84.—(1.) The salaried clerk of every petty sessional division shall be from time to time appointed, and removed, as heretofore. Appointment of the justices' clerks and clerks of committees.

(2.) The county council shall pay to the salaried clerks of petty sessional divisions such salaries as may be fixed under the enactments relating to those clerks, and all fees and costs payable to such clerks which are not excluded in the fixing of their salaries shall be paid into the county fund, and in the enactments relating to such salaries and fees the standing joint committee shall be substituted for the quarter sessions justices and the local authority respectively.

Clerks to justices are appointed in counties by the justices of the petty sessional division under 40 & 41 Vict. c. 43, s. 5, *ante*, p. 323, and in boroughs by the borough justices under s. 159 of the Municipal Corporations Act, 1882, *ante*, p. 118.

This section applies only to the clerks of county petty sessional divisions. The salary of the clerk to the justices of a borough is not affected by this Act, and remains payable out of the borough fund. See note (*a*) to s. 159 of the Municipal Corporations Act, 1882, *ante*, p. 119. *Thetford Corporation* v. *Norfolk County Council*, [1898] 2 Q. B. 468; 67 L. J. Q. B. 907; 79 L. T. 315; 47 W. R. 1; 62 J. P. 724; 14 T. L. R. 541; overruling *Cornwall County Council* v. *Truro Town Council*, (1894) 63 L. J. M. C. 60; 70 L. T. 354; 58 J. P. 299; and *Re Herefordshire County Council and Leominster Town Council*, [1895] 1 Q. B. 43; 64 L. J. M. C. 26; 71 L. T. 576; 59 J. P. 38.

Regulations for Bicycles, &c.

85.—(1.) The provisions of section twenty-six, sub-section five, of the Highways and Locomotives (Amendment) Act, 1878, and section twenty-three, sub-section one, of the Municipal Corporations Act, 1882, in so far as it gives power to the council to make byelaws regulating the use of carriages herein referred to, and all other provisions of any public Regulations for bicycles, &c.

Part V. Section 85.

or private Acts, in so far as they give power to any local authority to make byelaws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, and bicycles, tricycles, velocipedes, and other similar machines are hereby declared to be carriages within the meaning of the Highway Acts; and the following additional regulations shall be observed by any person or persons riding or being upon such carriage:—

(a) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage.

(b) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, being on or proceeding along the carriage way, every such person shall within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage.

(2.) Any person summarily convicted of offending against the regulations made by this section, shall for each and every such offence forfeit and pay any sum not exceeding forty shillings.

Section 26 (5) of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), empowered the justices in quarter sessions to make byelaws for regulating the use of bicycles in their county.

The power of arresting offenders without warrant, which is given by ss. 78 and 79 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), is not extended to offences against the additional regulations which are prescribed by this section. *Hatton* v. *Treeby*, [1897] 2 Q. B. 452; 66 L. J. Q. B. 729; 77 L. T. 309; 46 W. R. 6; 61 J. P. 586; 18 Cox C. C. 633; 13 T. L. R. 556.

Sunset and sunrise are to be reckoned according to the locality, and not by reference to Greenwich time. *Gordon* v. *Cann*, (1899) 68 L. J. Q. B. 434; 80 L. T. 20; 47 W. R. 269; 63 J. P. 324; 15 T. L. R. 165.

Adaptation of Acts.

Adaptation of Lunatic Asylum Acts.

86. [*For the purpose of adapting the Acts relating to pauper lunatic asylums to the provisions of this Act, the following provisions shall have effect:*—]

* * * * *

(5.) Any asylum provided in whole or in part at the cost of a county shall for the purposes of this Act be included in the expression "county lunatic asylum."

* * * * *

The whole of this section except sub-s. (5) has been repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), and is replaced by Part IX. of that Act.

Application of provisions of 38 & 39 Vict. c. 55, as to local inquiries and

87.—(1.) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may

cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.

This section does not apply to cases where differences are required to be determined by arbitration of the Local Government Board. See *Re Kent County Council and Sandgate Local Board, ante*, p. 443.

Sections 293—296 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), are as follows:—

"293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

"294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

"295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

"296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts."

The powers of poor law inspectors are contained in ss. 20 & 21 of the Poor Law Board Act, 1847 (10 & 11 Vict. c. 109), which provide as follows:—

"20. The said inspectors and each of them shall be entitled to visit and inspect every workhouse or place wherein any poor person in receipt of relief shall be lodged, and to attend every board of guardians and every parochial and other local meeting held for the relief of the poor, and to take part in the proceedings but not to vote at such board or meeting.

"21. The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor or any other matter placed by law under the control or regulation of the commissioners, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, and may examine any person whom they shall so summon or who shall voluntarily come before them to be examined upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or instead of administering an oath the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purpose as aforesaid shall be obeyed by all persons as if such summons had been the summons and order of the commissioners, and the non-observance thereof shall be punishable in like manner; and that the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first-recited Act are now payable: provided always that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode."

As to the expenses of witnesses, see 4 & 5 Will. 4, c. 76, s. 14.

Part V. Section 87.

(2.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of provisional orders by the Local Government Board), shall apply for the purposes of this Act as if they were herein re-enacted, and in terms made applicable thereto.

Sections 297 and 298 of the Public Health Act, 1875, are as follows :—

" 297. With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made :—

" (1). The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :

" (2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :

" (3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament :

" (4.) If while the bill confirming any such order is pending in either House of Parliament a petition is presented against any order comprised therein, the bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills :

" (5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament :

" (6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the bill confirming the order is pending in either House of Parliament :

" (7.) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with :

" (8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

" 298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly ; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs."

See *Brooks, Jenkins & Co.* v. *Torquay Corporation, ante*, p. 442.

(3.) Provided that, where a provisional order transfers to county councils generally any powers, duties, or liabilities of Her Majesty's Privy Council, a Secretary of State, the Local Government Board, or other Government department, it shall not be necessary to hold a local inquiry nor to advertise in any local newspaper.

(4.) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

(5.) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

* * * * *

Definitions.

Definition of "written."

99. All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purposes of this section "print" includes any mechanical mode of reproduction.

Interpretation of certain terms in the Act.

100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:

The expression "county" does not include a county of a city or county of a town:

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties:

The expression "division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division:

The expression "administrative county" means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough:

The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855, as amended by subsequent Acts: 18 & 19 Vict. c. 120.

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city: 45 & 46 Vict. c. 50.

The expression "quarter sessions borough" means a borough having a separate court of quarter sessions and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882:

The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects

Part V. Section 100.

the city of London, means the court of the mayor and aldermen in the inner chamber:

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within and part of it without, any county, borough, urban sanitary district, or other area, means each such part:

The expressions "parliamentary county," and "parliamentary election," and "parliamentary voters," have the same meaning as in the Registration Act, 1885, and the Acts therein referred to:

48 & 49 Vict. c. 15.

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The expression "Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day:

4 & 5 W. 4, c. 76.

The expression "guardians" means guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834:

Guardians are now elected in the manner provided by s. 20 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

The expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians:

The expressions "district council" and "county district" mean respectively any district council established for purposes of local government under an Act of any future session of Parliament, and the district under the management of such council, and until such council is established, mean respectively—

(a) as regards the provisions of this Act relating to highways and main roads, a highway authority and highway area; and

38 & 39 Vict. c. 55.

(b) save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and the district of such authority:

District councils have now been established under ss. 21—24 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

The expression "highway area" means, as the case may require, an urban sanitary district, a highway district, or a highway parish not included within any highway or urban sanitary district:

The expression "highway authority" means, as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board, or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties:

Highway Boards have now ceased to exist. In a rural district the highway authority is now the rural district council under s. 25 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

The expression "urban authority" means, until the establishment of district councils as aforesaid, an urban sanitary authority; and after their establishment, the district council of an urban county district:

The urban authority in a borough is the town council; in an urban district other than a borough it is now the urban district council. See s. 6 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and s. 21 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

The expression "rural authority" means, until the establishment of district councils as aforesaid, a rural sanitary authority; and, after their establishment, the district council of a rural county district:

The rural authority is now the rural district council. See ss. 21 and 24 of the Local Government Act, 1894.

The expression "person" includes any body of persons, whether corporate or unincorporate:

Any expression referring to the value of any parish, borough, or area as ascertained by the standard or basis for the county rate or contributions shall, where any rateable value has been fixed by agreement between the councils of any county and county boroughs be that value, and subject thereto shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area; and where an area is authorised or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate:

See the note to s. 33 (2), *ante*.

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority; and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions:

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities:

Part V. Section 100.

The expression "duties" includes responsibilities and obligations:

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose:

The expression "powers, duties, and liabilities" includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act:

The expression "expenses" includes costs and charges:

The expression "costs" includes charges and expenses:

The costs of assizes and of quarter and petty sessions include such of the following costs as are applicable, that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices, and other officers, the costs of the jury lists, the costs of rewards ordered to be paid by the court, the costs of prosecutions including the costs of the defendant's witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, [*but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes except in the case of prisoners committed for trial from the borough*]:

See ss. 32 (3) and 35 (5), *ante*. The words in italics have been repealed by the Costs in Criminal Cases Act, 1908, *post*, p. 654. See the note to s. 169 of the Municipal Corporations Act, 1882, *ante*.

The expression "assizes" includes the Central Criminal Court:

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer:

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly:

The expression "the divisions of Lincolnshire" means the parts of Holland, the parts of Kesteven, and the parts of Lindsey:

19 & 20 Vict. c. 69.

The expression "County and Borough Police Act, 1856," means the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-nine, intituled "An Act to render more effectual the police in counties and boroughs in England and Wales," and the expression "County and Borough Police Acts" means the County and Borough Police Act, 1856, and the Acts therein recited:

The expression "main road" when used in relation to the district of any highway or road authority, means so much of the main road as is situate within the district of such authority.

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the Town Hall or other conspicuous place.

Extent of Act.

101. This Act shall not extend to Scotland or Ireland.

Short title.

102. This Act may be cited as the Local Government Act, 1888.

Part VI.

Transitory Provisions.

* * * * *

Existing Officers.

118. * * * * *

(15.) Every person who, on the appointed day, is the chief or other constable of the police force of any county, or is an officer or servant employed in connexion with that force, shall, after the said day, be chief or other constable of the police force of the same county under the standing joint committee appointed in pursuance of this Act, or be an officer or servant of a county council appointing a portion of such joint committee, as the case may be.

(16.) Where any constable at the appointed day belongs to the police force of any borough the council of which will by virtue of this Act cease to maintain a separate police force, such constable shall, after the said day, become a constable of the county police force, and the provisions of this Act with respect to officers of any authority who become officers of the county council shall apply to such constable, with the substitution of the standing joint committee for the county council.

See ss. 39 (1) and 119 (4).

119. * * * * *

(4.) The provisions of this section shall apply to the chief and other constables of any police force, and to any officers employed in connexion with such force, in like manner as if they were herein re-enacted with the substitution of the standing joint committee under this Act for the county council.

This section relates to officers transferred to county councils.

Compensation to existing officers.

120.—(1.) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

See the definition of "officer" in s. 100, *ante*. Where a local authority had for many years entrusted the whole of their legal business to a firm of solicitors who did

Part VI. Section 120.

not receive a salary but were paid the usual professional charges for the work done by them, it was held that the solicitors were not officers of the local authority within the meaning of this section. *Re Carpenter & Bristol Corporation*, [1907] 2 K. B. 617; 76 L. J. K. B. 1145; 97 L. T. 461; 71 J. P. 417; 5 L. G. R. 977; 23 T. L. R. 654.

As to the allowance made by the Treasury on abolition of offices, see s. 7 of the Superannuation Act, 1859 (22 & 23 Vict. c. 26), and s. 6 of the Superannuation Act, 1909 (9 Edw. 7, c. 10).

This section is made applicable by s. 81 (7) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 572, to existing officers affected by that Act. See also r. (21) of the Second Schedule to the Education Act, 1902 (2 Edw. 7, c. 42), *post*, p. 619.

As to compensation for loss of office, see *Clarke* v. *Lewisham Borough Council*, (1902) 67 J. P. 195; 1 L. G. R. 63; 19 T. L. R. 62; and as to an office held during pleasure, see *Smyth* v. *Reg.*, [1898] A. C. 782; 67 L. J. P. C. 129; 79 L. T. 199.

(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

5 & 6 Will. 4, c. 62.

(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

The amount of the salary and emoluments of the office is to be determined by the council, and their decision cannot be reviewed by the Court in an action to recover the amount of compensation assessed. Where the council have passed a resolution assessing the amount of compensation, they have no power to rescind it. The question whether the amount assessed is excessive can only be determined by the Treasury under sub-s. (4). *Livingstone* v. *Westminster Corporation*, [1904] 2 K. B. 109; 73 L. J. K. B. 434; 52 W. R. 395; 68 J. P. 276; 2 L. G. R. 581; 20 T. L. R. 361.

Where it appears that the council have not exercised their discretion in the matter, a *mandamus* may be granted directing them to take the facts of the case into consideration. Thus a *mandamus* was granted where the council had acted on the assumption that they were bound by the practice of the Treasury to make a deduction of one-fourth of the amount of compensation in the case of an officer who was not required to devote his whole time to the duties of his office. *R.* v. *Stepney Corporation*, [1902] 1 K. B. 317; 71 L. J. K. B. 238; 86 L. T. 21; 50 W. R. 412; 66 J. P. 183; 18 T. L. R. 98.

(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

(5.) Any claimant under this section, if so required by any member

of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a speciality debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

See *West* v. *Wilts County Council*, (1893) 10 T. L. R. 19.

(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.

* * * * *

Savings.

* * * * *

123. All such byelaws, orders, and regulations of the Privy Council, Secretary of State, Board of Trade, Local Government Board, or Government department, or of any quarter sessions, council of a borough, the Metropolitan Board of Works, or other authority, whose powers and duties are transferred by or in pursuance of this Act to any county council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if they had been made by such council, subject, nevertheless, to revocation or alteration by such council in the manner in which byelaws can be made by such council, and also to any exceptions or modifications which may be made at the time of the transfer.

Saving for existing byelaws.

* * * * *

125. Save so far as may be necessary to give effect to this Act or any scheme or order or other thing made or done thereunder nothing in this Act shall prejudicially alter or affect the powers, rights, privileges, or immunities of any municipal corporation, or the operation of any municipal charter, local Act of Parliament, or order confirmed by

Saving for charters, local Acts, &c.

Part VI. Section 125. Parliament, which immediately before the passing of this Act was in force.

Repeals.

Repeal of Acts.

126. All enactments inconsistent with this Act are hereby repealed ; Provided that—

(1.) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act :

(2.) This repeal shall not affect—

(a) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed ; or

(b) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed ; or

(c) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or

(d) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

Sections 31, 34, 35, 36, 69.

SCHEDULES.

* * * * *

THIRD SCHEDULE.

County Boroughs.

Name of Borough.	Name of County in which, for the purpose of this Act, the Borough is deemed to be situate.
Barrow	Lancaster.
Bath	Somerset.
Birkenhead	Chester.
Birmingham	Warwick.
Blackburn	Lancaster.
Bolton	Lancaster.
Bootle cum Linacre	Lancaster.
Bradford	York, West Riding.
Brighton	Sussex.
Bristol	Gloucester and Somerset.
Burnley	Lancaster.
Bury	Lancaster.
Canterbury	Kent.
Cardiff	Glamorgan.
Chester	Chester.
Coventry	Warwick.
Croydon	Surrey.

Third Schedule—*contd.* Schedule 3.

Name of Borough.	Name of County in which, for the purpose of this Act, the Borough is deemed to be situate.
Derby	Derby.
Devonport	Devon.
Dudley	Worcester.
Exeter	Devon.
Gateshead	Durham.
Gloucester	Gloucester.
Great Yarmouth	Norfolk and Suffolk.
Halifax	York, West Riding.
Hanley	Stafford.
Hastings	Sussex.
Huddersfield	York, West Riding.
Ipswich	Suffolk.
Kingston-upon-Hull	York, East Riding.
Leeds	York, West Riding.
Leicester	Leicester.
Lincoln	Lincoln (parts of Lindsey).
Liverpool	Lancaster.
Manchester	Lancaster.
Middlesbrough	York, North Riding.
Newcastle-upon-Tyne	Northumberland.
Northampton	Northampton.
Norwich	Norfolk.
Nottingham	Nottingham.
Oldham	Lancaster.
Plymouth	Devon.
Portsmouth	Hants.
Preston	Lancaster.
Reading	Berks.
Rochdale	Lancaster.
Saint Helen's	Lancaster.
Salford	Lancaster.
Sheffield	York, West Riding.
Southampton	Hants.
South Shields	Durham.
Stockport	Chester and Lancaster.
Sunderland	Durham.
Swansea	Glamorgan.
Walsall	Stafford.
West Bromwich	Stafford.
West Ham	Essex.
Wigan	Lancaster.
Wolverhampton	Stafford.
Worcester	Worcester.
York	York, North, East, and West Ridings.

Grimsby, Oxford, Newport (Mon.), Bournemouth, Warrington, Burton-upon-Trent, Rotherham, West Hartlepool, Blackpool, Tynemouth, Southport, Smethwick, Merthyr Tydfil, and Stoke-on-Trent, have been constituted county boroughs since this Act was passed, by provisional orders made under s. 54 (1), *ante*.

THE MORTMAIN AND CHARITABLE USES ACT, 1888.

(51 & 52 VICT. c. 42.)

An Act to consolidate and amend the law relating to Mortmain and to the disposition of Land for Charitable Uses. [13th August, 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

MORTMAIN.

Forfeiture on unlawful assurance or acquisition in mortmain.

1.—(1.) Land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from Her Majesty the Queen, or of a statute for the time being in force, and if any land is so assured otherwise than as aforesaid the land shall be forfeited to Her Majesty from the date of the assurance, and Her Majesty may enter on and hold the land accordingly :

(2.) Provided as follows :

(i.) If the land is held directly of a mesne lord under Her Majesty, that mesne lord may enter on and hold the land at any time within twelve months from the date of the assurance :

(ii.) If the land is held of more than one mesne lord in gradation under Her Majesty, the superior of those mesne lords may enter on and hold the land at any time within six months after the time at which the right of the inferior lord to enter on the land expires :

(iii.) If a mesne lord is at the time when his right of entry accrues under this Act a lunatic or otherwise under incapacity, his right of entry may be exercised by his guardian or the committee of his estate, or by such person as Her Majesty's High Court of Justice may appoint in that behalf :

(iv.) If the right of entry under this Act is exercised by or on behalf of a mesne lord, the land shall be forfeited to that lord from the date of the assurance instead of to Her Majesty.

"Alienation in mortmain, *in mortua manu*, is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal." 2 Blackstone, Comm. 268.

As to the power of a municipal corporation to acquire land, see s. 107 of the Municipal Corporations Act, 1882, *ante*, p. 88. See also s. 175 of the Public Health

Act, 1875 (38 & 39 Vict. c. 55), as to the power to acquire land for the purposes of that Act.

A corporation may invest moneys held in trust by them for any public or charitable purpose on any real security authorised by the trust, without being deemed to have acquired any land within the meaning of the laws relating to mortmain. 33 & 34 Vict. c. 34, s. 1.

Power to Her Majesty to grant licences in mortmain.

2. It shall be lawful for Her Majesty the Queen, if and when and in such form as she thinks fit, to grant to any person or corporation a licence to assure in mortmain land in perpetuity or otherwise, and to grant to any corporation a licence to acquire land in mortmain and to hold the land in perpetuity or otherwise.

Saving for rents and services.

3. No entry or holding by or forfeiture to Her Majesty under this Part of this Act, shall merge or extinguish, or otherwise affect, any rent or service which may be due in respect of any land to Her Majesty or any other lord thereof.

Part II.

Charitable Uses.

Conditions under which assurances may be made to charitable uses.

4.—(1.) Subject to the savings and exceptions contained in this Act, every assurance of land to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses, shall be made in accordance with the requirements of this Act, and unless so made shall be void.

(2.) The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

(3.) The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision for the benefit of the assuror or of any person claiming under him.

(4.) Provided that the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assuror as to the assuror himself; namely,

(i.) The grant or reservation of a peppercorn or other nominal rent;

(ii.) The grant or reservation of mines or minerals;

(iii.) The grant or reservation of any easement;

(iv.) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;

(v.) A right of entry on nonpayment of any such rent or on breach of any such covenant or provision;

(vi.) Any stipulation of the like nature for the benefit of the assuror or of any person claiming under him.

(5.) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent,

Part II. Section 4.

rentcharge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for nonpayment thereof.

(6.) If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

(7.) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death.

(8.) If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assuror, including in those six months the days of the transfer and of the death.

(9.) If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after the execution thereof, be enrolled in the Central Office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land.

This Act does not apply to the Colonies. Where a domiciled Victorian left a sum of money by will to the mayor and corporation of Canterbury for the purchase of land in England, and the erection of a free library and reading-room thereon, it was held that the bequest, which was valid according to the law of Victoria, was not affected by English law. *Mayor of Canterbury* v. *Wyburn*, [1895] A. C. 89; 64 L. J. P. C. 36; 71 L. T. 554; 43 W. R. 430; 11 T. L. R. 30.

Power to remedy omission to enrol within requisite time.

5.—(1.) Where an instrument, the enrolment whereof is required under this Part of this Act for the validation of an assurance, is not duly enrolled within the requisite time, Her Majesty's High Court of Justice, or the officer having control over the enrolment of deeds in the Central Office, may, on application in such manner and on payment of such fee as may be prescribed by rules of the Supreme Court, and on being satisfied that the omission to enrol the instrument in proper time has arisen from ignorance or inadvertence, or through the destruction or loss of the instrument by time or accident, and that the assurance was of a nature to be validated under this section, order or cause the instrument to be enrolled.

(2.) Thereupon, if the assurance to be validated was made in good faith and for full and valuable consideration, and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorised by this Act, and if at the time of the application possession or enjoyment was held under the assurance, then enrolment in pursuance of this section shall have the same effect as if it had been made within the requisite time:

(3.) Provided that if at the time of the application any proceeding for setting aside the assurance, or for asserting any right founded on the

invalidity of the assurance, is pending, or any decree or judgment founded on such invalidity has been then obtained, the enrolment under this section shall not give any validity to the assurance.

(4.) Where the instrument omitted to be enrolled in proper time has been destroyed or lost by time or accident and the trusts thereof sufficiently appear by a copy or abstract thereof or some subsequent instrument, such copy, abstract, or subsequent instrument may be enrolled under this section in like manner and with the like effect as if it were the instrument so destroyed or lost.

(5.) An application under this section may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled.

Part III.

Exemptions.

Assurances for a public park, elementary school, or public museum.

6.—(1.) Parts One and Two of this Act shall not apply to an assurance by deed of land of any quantity or to an assurance by will of land of the quantity herein-after mentioned for the purposes only of a public park, a schoolhouse for an elementary school, a public museum, or an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only :

(2.) Provided that a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in the case of a deed the execution of the deed.

(3.) The quantity of land which may be assured by will under this section shall be any quantity not exceeding twenty acres for any one public park, and not exceeding two acres for any one public museum, and not exceeding one acre for any one schoolhouse.

(4.) In this section :—

(i.) " public park " includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public ;

(ii.) " elementary school " means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week ;

(iii.) " school house " includes the teacher's dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school ;

(iv.) " public museum " includes buildings used or to be used for

Part III. Section 6.

the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connexion therewith.

Further exemptions are enacted by 53 & 54 Vict. c. 16, *post*, p. 485; 55 & 56 Vict. c. 11, *post*, p. 515; 55 & 56 Vict. c. 29, s. 10, *post*, p. 520; 2 Edw. 7, c. 42, s. 23 (5), *post*, p. 611.

Assurances for certain universities, colleges, and societies.

7. Part Two of this Act shall not apply to the following assurances:

(i.) An assurance of land, or personal estate to be laid out in the purchase of land, to or in trust for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges or houses of learning within any of those universities, or to or in trust for any of the Colleges of Eton, Winchester, and Westminster, for the better support and maintenance of the scholars only upon the foundations of those last-mentioned colleges, or to or in trust for the warden, council, and scholars of Keble College:

(ii.) An assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration:

Provided that the trustees of the instrument containing any assurance to which this section applies or declaring the trusts thereof, may, if they think fit, at any time cause the instrument to be enrolled in the Central Office of the Supreme Court of Judicature.

Substitution of provisions of Act for corresponding repealed enactments.

8. Where by any Statute now in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner.

PART IV.

SUPPLEMENTAL.

Adaptation of law to system of land registration. 38 & 39 Vict. c. 87.

9. Any assurance of land which is by this Act required to be made by deed may be made by a registered disposition under the provisions of the Land Transfer Act, 1875, or of any Act amending the same, and any assurance so made shall be exempt from the provisions of this Act as to execution in the presence of witnesses, and as to enrolment in the Central Office of the Supreme Court.

Part IV. Section 10.

Definitions.

10. In this Act, unless the context otherwise requires,—

(i.) "Assurance" includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument; and "assure" and "assuror" have meanings corresponding with assurance.

(ii.) "Will" includes codicil.

(iii.) ["*Land*" *includes tenements and hereditaments corporeal and incorporeal of whatsoever tenure, and any estate and interest in land.*]

(iv.) "Full and valuable consideration" includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rentcharge, or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for nonpayment thereof, or partly paid and partly reserved as aforesaid.

The definition of "land" has been repealed by s. 3 of the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), which provides that "land" in this Act and in that Act shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land.

Extent of Act.

11. This Act shall not extend to Scotland or Ireland.

Savings for existing customs, &c.

12. Nothing in this Act shall affect the operation or validity of any charter, licence, or custom in force at the passing of this Act enabling land to be assured or held in mortmain.

Repeal.

13.—(1.) * * * * *

Sub-s. (1) of this section repeals a number of enactments which are specified in the Schedule to the Act.

(2.) Whereas by the preamble to the Act of the forty-third year of Elizabeth, chapter four (being one of the enactments hereby repealed), it is recited as follows:

"Whereas landes tenementꝭ rentes annuities pfittes hereditamentes, goodes chattels money and stockes of money, have bene heretofore given limitted appointed and assigned, as well by the Queenes moste excellent Majestie and her moste noble progenitors, as by sondrie other well disposed psons, some for releife of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univ̄sities, some for repaire of bridges portes havens causwaies churches seabankes and highewaies, some for educac̄on and p̄fermente of orphans, some for or towardes reliefe stocke or maintenance for howses of correcc̄on, some for mariages of poore maides, some for supportac̄on ayde and helpe of younge tradesmen, handiecraftsmen and psons decayed, and others for releife or redemption of prisoners or captives, and for aide or ease of any poore inhabitantꝭ con̄ninge paymente of fifteenes, settinge out of souldiers and other taxes; whiche landes tenements rents annuities pfitts hereditaments goodes chattells money and stockes of money nev̄theles have not byn imployed accordinge to the charitable intente of

Part IV. Section 13.

the givers and founders thereof, by reason of fraudes breaches of truste and negligence in those that shoulde pay delyver and imploy the same:" and whereas in divers enactments and documents reference is made to charities within the meaning, purview, and interpretation of the said Act:

Be it therefore enacted that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.

Short title.

14. This Act may be cited as the Mortmain and Charitable Uses Act, 1888.

SCHEDULE.

Sect. 13.

Acts Repealed.

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THE WEIGHTS AND MEASURES ACT, 1889.

(52 & 53 Vict. c. 21.)

An Act for amending the Law relating to Weights and Measures, and for other purposes connected therewith. [26th July, 1889.]

Whereas it is expedient to amend the Weights and Measures Act, 1878 (herein-after referred to as the principal Act), and the law relating to the sale of coal: 41 & 42 Vict. c. 49.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Only so much of this Act is here set out as relates to the powers and duties of the council of a municipal borough with respect to the administration of the law relating to weights and measures.

The Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), is set out *ante*, p. 346. See also 55 & 56 Vict. c. 18, *post*, p. 516; 56 & 57 Vict. c. 19, *post*, p. 535; and 4 Edw. 7, c. 28, *post*, p. 636.

Part I.

Weights and Measures.

Verification of weighing instruments.

1.—(1.) Every weighing instrument used for trade shall be verified and stamped by an inspector of weights and measures with a stamp of verification under this Act.

(2.) Every person who, after the expiration of twelve months from the commencement of this Act, uses, or has in his possession for use, for trade any weighing instrument not stamped as required by this Act, shall be liable to a fine not exceeding two pounds, or in the case of a second offence five pounds.

(3.) The power of making byelaws conferred by section fifty-three of the principal Act shall extend to the making of byelaws for giving effect to this section.

(4.) Section thirty-two of the principal Act shall apply to weighing instruments in like manner as it applies to weights and measures.

Local verification of metric weights and measures.

2. The Board of Trade may, if they think fit, at the expense of the local authority, deposit with any inspector of weights and measures copies of any of the metric standards in their custody, and cause to be verified with any copy so deposited any metric weights and measures which can under section thirty-eight of the principal Act be compared with the metric standards in their custody.

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Part I. Section 7.

Working standards.

7. Any local authority may provide for the use of their officers working standards of measure and weight, and scale-beams of such material and in such form as the Board of Trade may approve, and those standards may, if verified in such manner as the Board of Trade from time to time direct, be used for the inspection and verification of weights and measures as if they were local standards.

This section is to have effect as if before the words "provide for" there were inserted the words "and if so directed by the Board of Trade shall." Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 13, *post.*

* * * * *

9. * * * * *

This section, which required local authorities to make general regulations for the guidance of the inspectors appointed by them, has been repealed by s. 5 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28), *post.* See the note to s. 53 of the Weights and Measures Act, 1878, *ante.*

Provision as to local inquiries.

10.—(1.) The Board of Trade may from time to time appoint an officer to hold a local inquiry with respect to the administration of the law relating to weights and measures within the jurisdiction of any local authority.

(2.) The appointment may be made either on the application of the local authority or without such application, but with the concurrence of the Treasury.

(3.) The officer so appointed shall visit the office of the local inspector of weights and measures, and shall, among other things, inquire into the procedure observed in the verification and inspection of weights, measures, and weighing instruments within that jurisdiction; and, on the completion of the local inquiry, shall report to the Board of Trade and to the local authority on the condition and equipment of the office visited, and on the mode in which the law relating to weights and measures is being carried out within the jurisdiction of that authority.

(4.) Where the appointment is made on the application of a local authority, the costs incurred in relation to the inquiry, including the remuneration of any officer engaged in the inquiry, not exceeding three guineas a day, shall be paid by the local authority applying for or assenting to the inquiry, and the Board of Trade may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any local authority shall be a debt to the Crown from that authority.

(5.) Where the appointment is made otherwise than on the application of the local authority, the costs incurred in relation to the inquiry, including the remuneration aforesaid, shall be paid out of moneys provided by Parliament.

Qualification of inspectors of weights and measures.

11.—(1.) * * * *

(3.) There shall be charged in respect of the examinations under this section such fees as the Board of Trade, with the concurrence of the Treasury, from time to time direct, and all such fees shall be applied in such manner and to such extent as the Treasury from time to time direct, in aid of money provided by Parliament for expenses of the Board of Trade under this Act, and if and as far as not so applied shall be paid into the Exchequer.

Sub-sections (1) and (2) of this section, which provided for the examination of persons acting as inspectors of weights and measures, have been repealed by s. 8 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28), *post*, which prohibits the appointment of any person who has not obtained a certificate from the Board of Trade. Under that section any person who acts as an inspector without being duly appointed, or who, having been appointed after the 1st January, 1890, acts as an inspector without having obtained a certificate, is liable to a fine not exceeding £10, or in the case of a second or subsequent offence £20.

An inspector who has not obtained a certificate is not precluded from laying an information for an offence under the Act, for the Act does not provide that no one but an inspector can lay an information. *Crabtree* v. *Bulman*, (1896) 60 J. P. 489; 12 T. L. R. 469.

Inspector not to be maker, seller, or adjuster of weights, measures, or weighing instruments.

12.—(1.) An inspector of weights and measures shall not, during the time he holds office, be a person deriving any profit from or employed in the making, adjusting, or selling of weights, measures, or measuring or weighing instruments:

(2.) Provided that in any district where, on the representation of the local authority, it appears to be desirable for an inspector of weights and measures to be allowed to adjust weights and measures, the Board of Trade may, if they think fit, authorise an inspector appointed by that local authority to act as an adjuster of weights and measures.

(3.) An inspector so authorised may for any such adjustment make such charges as the local authority approve, and shall account for and pay any money received by him in respect of such charges in such manner as the local authority direct.

Fees for verification, and stamping by inspectors.

13.—(1.) An inspector of weights and measures may take in respect of the verification and stamping of weights, measures, and weighing instruments the fees specified in the First Schedule to this Act, and no others, [*and no discount shall be allowed*], and such inspector shall at such times, not less often than once a quarter, as the local authority direct, account for and pay over to the local authority, or as they direct, all fees so taken.

(2.) If the Board of Trade represent to Her Majesty that it would be expedient to fix fees to be paid on the verification and stamping of weights, measures, or weighing instruments, in cases other than those specified in the said schedule, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct such fees to be paid.

The fees that may now be taken are specified by Order in Council dated December 21st, 1907, made under s. 9 of the Weights and Measures Act, 1904, *post*, in substitution for those specified in the schedule to this Act which is repealed. The local authority have no power to vary the fees specified or to direct that no fees at all are to be taken. *R.* v. *Roberts*, [1901] 2 K. B. 117; 70 L. J. K. B. 590; 84 L. T. 530; 49 W. R. 488; 65 J. P. 359; 17 T. L. R. 426.

The provision contained in s. 13 (5) of the Weights and Measures Act, 1904, *post*, p. 638, is to be substituted for the words "no discount shall be allowed" in this section.

Publication of convictions.

14. Where a person is convicted before any court of any offence under the principal Act, or this Act, the court may, if it thinks fit, cause the conviction to be published in such manner as it thinks desirable.

Application of 41 & 42 Vict. c. 49, s. 66, to gas standards.

15. The provisions of the principal Act and of this Act as to the verification and re-verification of local and working standards shall apply to the standards used by any local authority in testing meters

Part I. Section 15.

under the Act of the Session held in the twenty-second and twenty-third years of the reign of Her present Majesty, chapter sixty-six, intituled "An Act for regulating measures used in sales of gas," and the Acts amending the same.

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PART II.

Sale of Coal.

* * * * *

Weighing instrument to be kept in place where coal sold by retail.

25.—(1.) Where coal is sold by retail for delivery at the place where it is kept for sale and there is not at or near such place any weighing instrument stamped by an inspector of weights and measures at which the coal can be weighed, the seller shall keep at that place a weighing instrument stamped as aforesaid, and shall, if so required by any purchaser, or by any inspector of weights and measures, or by any other officer appointed for the purpose by the local authority, weigh any coal before the sale or delivery thereof.

(2.) If any person fails to comply with the requirements of this section he shall be liable to a fine not exceeding for a first offence two pounds, and for any subsequent offence five pounds.

Erection and maintenance of weighing instruments.

26.—(1.) The local authority may erect and maintain fixed weighing instruments at convenient places for the purpose of weighing coal, and may provide, furnish, and maintain portable weighing instruments for the same purpose, and may appoint proper persons to keep and attend any such instruments.

(2.) If the keeper of any such fixed weighing instrument refuses, without reasonable excuse, to weigh or re-weigh any vehicle or coal, or so weighs any vehicle or coal as wilfully to defraud either the seller or the purchaser of coal, he shall be liable to a fine not exceeding five pounds.

Power to require weighment of coal or vehicle.

27.—(1.) Any seller or purchaser of coal, person in charge of a vehicle in which coal is carried, inspector of weights and measures, or other officer appointed for the purpose by the local authority (*a*), may require that any coal or any vehicle used for the carriage of coal in bulk be weighed or re-weighed by any weighing instrument stamped by an inspector of weights and measures.

Provided as follows:

(a) No seller of coal or person in charge of a vehicle in which coal is carried shall be required under this section to carry coal beyond such distance, not exceeding half a mile, as may be prescribed in that behalf by the local authority:

(b) Where any such coal or vehicle has at the instance of the purchaser been weighed or re-weighed in pursuance of this section, and found to be of the weight stated in that behalf by the seller of the coal or the person in charge of the vehicle, the purchaser shall be liable to the payment of all reasonable

costs actually incurred of and incidental to the weighing or re-weighing.

(2.) If any person obstructs any weighing or re-weighing authorised by this section he shall be liable to a fine not exceeding five pounds.

(*a*) The Act contemplates the selection of special persons for the purpose, and not the general delegation of the power to all constables. *Alty* v. *Farrell*, *infra*, per Lord Russell of Killowen, C.J.

Power to make byelaws with respect to the sale of coal.

28.—(1.) Any local authority may from time to time make, revoke, and alter byelaws,

(a) regulating for the purposes of this Act the sale of coal in quantities not exceeding two hundredweight; and,

(b) requiring, either generally or in specified classes of cases, a weighing instrument, of a form approved by the local authority, to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser; and

(c) prescribing the distance beyond which coal is not to be required to be carried for the purpose of being weighed or re-weighed in pursuance of this Act; and

(d) fixing the fees to be paid for the use of any weighing instrument maintained by the local authority;

and may by such byelaws impose fines, recoverable summarily, and not exceeding in each case five pounds, for the breach of any such byelaw.

(2.) Every byelaw made under this section shall, before being brought into operation, be approved by the Board of Trade and be published in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and a copy of every such byelaw shall be sent by the local authority to the Board of Trade.

As to the validity of byelaws made by a municipal corporation, see the notes to s. 23 of the Municipal Corporations Act, 1882, *ante*, p. 33.

A byelaw made under this section provided as follows: "Every coal dealer shall provide, and every person employed by him who shall convey or carry coal for sale or delivery to a purchaser from or out of any vehicle shall carry therewith, a correct and stamped weighing machine of the form approved by the county council, and such person shall re-weigh the coal upon being requested to do so." The first part of this byelaw was held to be valid, but the court expressed no opinion as to the validity of the requirement that the coal should be re-weighed. *Kent County Council* v. *Humphrey*, [1895] 1 Q. B. 903; 64 L. J. M. C. 190; 72 L. T. 563; 43 W. R. 506; 59 J. P. 520; 11 T. L. R. 386. See also *Martin* v. *Clarke*, (1893) 62 L. J. M. C. 178; 9 T. L. R. 656.

A byelaw, the first part of which was similar to that in *Kent County Council* v. *Humphrey*, *supra*, proceeded to require that "such person shall re-weigh the coal upon being requested to do so by any purchaser, or by anyone on behalf of the purchaser, or by an inspector of weights and measures, or by any constable." This requirement was held to be unreasonable, on the ground that there was no limitation that the request must be reasonable, and that the man might have to weigh the coal again and again at the request of each one of these parties. Further, the Act did not contemplate that the power to require coal to be weighed or re-weighed should be delegated to every constable in the borough. Wright, J., doubted whether the section authorised a byelaw requiring the person in charge of the vehicle to re-weigh the coal at all. *Alty* v. *Farrell*, [1896] 1 Q. B. 636; 65 L. J. M. C. 115; 74 L. T. 492; 60 J. P. 373; 12 T. L. R. 346.

Where a byelaw required a correct weighing instrument to be carried with any vehicle in which coal was conveyed for sale by retail for the purpose of weighing any quantity of coal not exceeding two hundredweight, it was held that the byelaw

Part II. Section 28.

was not complied with unless the vehicle contained sufficient weights to enable any bag of coal to be weighed in a single operation. *Crick* v. *Nicholls*. [1905] 1 K. B. 501; 74 L. J. K. B. 283; 92 L. T. 169; 53 W. R. 431; 69 J. P. 144; 20 Cox C. C. 777; 3 L. G. R. 277; 21 T. L. R. 235. A byelaw made by a county council which required every person selling or exposing for sale coal in quantities not exceeding two hundredweight to cause his name and place of business, if such place of business was situated within the county, to be registered in the books of the inspector of weights and measures in whose district such person carried on business, was held to be valid. *Ward* v. *Franklin*, (1909) 101 L. T. 681; 73 J. P. 506; 7 L. G. R. 1075.

Power to weigh coal in shop or vehicle.

29.—(1.) Any inspector of weights and measures or officer appointed for the purpose by the local authority may, at all reasonable times, enter any building or part of a building or other place in which coal is sold or kept or exposed for sale, and may stop any vehicle carrying coal for sale or for delivery to a purchaser, and may test any weights and weighing instruments found in any such place or vehicle, and may weigh any load, sack, or other less quantity of coal, found in any such place or vehicle, or which is in course of delivery to any purchaser.

(2.) If it appears to a court of summary jurisdiction that any load, sack, or less quantity so weighed is of less weight than that represented by the seller, the person selling or keeping or exposing the coal for sale, or the person in charge of the vehicle, as the case may be, shall be liable to a fine not exceeding five pounds.

(3.) Any person who obstructs or hinders any inspector acting under this section shall be liable to a fine not exceeding five, or, in the case of a second or subsequent offence ten, pounds.

The seller incurs no liability under this section unless he has made a representation as to the weight of the coal. A master was held not to be liable for a representation made by his servant which was not authorised by him. *Roberts* v. *Woodward*, (1890) 25 Q. B. D. 412; 59 L. J. M. C. 129; 63 L. T. 200; 38 W. R. 770; 55 J. P. 116; 17 Cox C. C. 139. As to what amounts to a representation as to the weight of the coal, see *Baker* v. *Herd*, (1894) 58 J. P. 413; 10 T. L. R. 181; *Franklin* v. *Godfrey*, (1894) 63 L. J. M. C. 239; 43 W. R. 46. A carter who is merely taking coal for delivery, and who does not know that it is of less weight than his employer has represented, is not liable to be convicted under this section. *Paul* v. *Hargreaves*, [1908] 2 K. B. 289; 77 L. J. K. B. 535; 98 L. T. 751; 72 J. P. 231; 21 Cox C. C. 584; 6 L. G. R. 530; 24 T. L. R. 501.

Power to make local exemptions.

30. Her Majesty the Queen may, from time to time, on the application of the local authority for any area, and on being satisfied that the provisions made by or under any local Act in force at the commencement of this Act with respect to the sale of coal in that area are more stringent than the corresponding provisions of this Act, by Order in Council exempt that area from the provisions of this Part of this Act to such extent, and under such conditions, as may appear to Her Majesty in Council expedient.

Extent.

31. This Part of this Act, except the provision requiring coal to be sold by weight only, shall not extend to Scotland.

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PART IV.

Supplemental.

Part IV. Section 34.

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34. This Act and the principal Act shall be construed together as one Act. Construction of Act.

35. In this Act, unless the context otherwise requires,— Definitions.

"Weighing instrument" includes scales, with the weights belonging thereto, scale-beams, balances, spring-balances, steelyards, weighing machines, and other instruments for weighing:

"Measuring instrument" includes any instrument for the measurement of length, capacity, volume, temperature, pressure, or gravity, or for the measurement and determination of electrical quantities;

"Vehicle" means any carriage, cart, waggon, truck, barrow, or other means of carrying coal by land, in whatever manner the same may be drawn or propelled, but does not include a railway truck or waggon:

"Inspector" means an inspector under the principal Act:

Other expressions have the same meaning as in the principal Act: Provided that the expression "local authority" shall, in its application to England, be construed subject to the provisions of the Local Government Act, 1888, and the expression "weighing machine" in the principal Act shall include any weighing instrument as defined by this Act. 51 & 52 Vict. c. 41.

See s. 40 of the Weights and Measures Act, 1878, *ante*, p. 346, and ss. 34, 35, and 39 of the Local Government Act, 1888, *ante*, pp. 423, 426, 434.

The definition of "weighing instrument" in this section is to be read as including a weighing instrument constructed to also calculate and indicate the price in money. Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 16, *post*.

* * * * *

39. This Act may be cited as the Weights and Measures Act, 1889; and the principal Act and this Act may be cited together as the Weights and Measures Acts, 1878 and 1889. Short titles.

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THE INTERPRETATION ACT, 1889.

(52 & 53 VICT. c. 63.)

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30th August, 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Re-enactment of existing Rules.

Rules as to gender and number.

1.—(1.) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears,—

(a) words importing the masculine gender shall include females ; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular.

(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

Application of penal Acts to bodies corporate.

2.—(1.) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression " person " shall, unless the contrary intention appears, include a body corporate.

(2.) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of certain words in Acts since 1850.

3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them ; namely,—

The expression " month " shall mean calendar month :

The expression " land " shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure :

The expressions " oath " and " affidavit " shall, in the case of persons for the time being allowed by law to affirm or declare instead of

swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare. Section 3.

4. In every Act passed after the year one thousand eight hundred and fifty and before the commencement of this Act the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town. Meaning of "county" in past Acts.

5. In every Act passed after the year one thousand eight hundred and sixty-six, whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed. Meaning of "Parish."

See the definitions of "parish" in s. 7 of the Municipal Corporations Act, 1882, *ante*, p. 4; in s. 20 of the Poor Rate Assessment and Collection Act, 1869, *ante*, p. 255; and in s. 100 of the Local Government Act, 1888, *ante*, p. 454.

6. In this Act, and in every Act and Order of Council passed or made after the year one thousand eight hundred and forty-six, whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention appears, mean as respects England and Wales a court under the County Courts Act, 1888. Meaning of "county court."

51 & 52 Vict. c. 43.

* * * * *

8. Every section of an Act shall have effect as a substantive enactment without introductory words. Sections to be substantive enactments.

9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act. Acts to be public Acts.

10. Any Act may be altered, amended, or repealed in the same session of Parliament. Amendment or repeal of Acts in same session.

11.—(1.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment. Effect of repeal in Acts passed since 1850.

(2.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

* * * * *

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:— Judicial definitions in past and future Acts.

* * * * *

Section 13.

(11.) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.

Justices sitting at a licensing meeting are not a court of summary jurisdiction. *Boulter* v. *Kent Justices*, [1897] A. C. 556; 66 L. J. Q. B. 787; 77 L. T. 288; 46 W. R. 114; 61 J. P. 532; 13 T. L. R. 538.

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(14.) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

* * * * *

Meaning of borough.

15. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

45 & 46 Vict. c. 50.

(1.) The expression "municipal borough" shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen and burgesses of the borough acting by the council.

(2.) The expression "municipal borough" shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of municipal corporations in Ireland."

(3.) The expression "parliamentary borough" shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(4.) The expression "borough" when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

See the definition of "borough" in s. 7 of the Municipal Corporations Act, 1882, *ante*, p. 3; and see *Re Leeds Institute of Science, &c., and Leeds City Council*, *ante*, p. 6.

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Definitions relating to elections.

17. In every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

Section 17

(1.) The expression " parliamentary election " shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2.) The expression " parliamentary register of electors " shall mean a register of persons entitled to vote at any parliamentary election.

(3.) The expression " local government register of electors " shall mean as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.

As to the burgess roll, see s. 45 of the Municipal Corporations Act, 1882, *ante*, p. 55; and as to the county register, see s. 7 of the County Electors Act, 1888, 51 & 52 Vict. c. 10, *post*, p. 413.

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Meaning of " person " in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression " person " shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

A similar provision is contained in s. 7 of the Municipal Corporations Act, 1882, *ante*, p. 5; and in s. 100 of the Local Government Act, 1888, *ante*, p. 455.

Meaning of " writing " in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

See the definition of " writing " in s. 7 of the Municipal Corporations Act, 1882, *ante*, p. 5.

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Meaning of service by post.

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression " serve," or the expression " give " or " send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

* * * * *

Construction of statutory rules, &c.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32.—(1.) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where an Act passed after the commencement of this Act confers

Section 32.

a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3.) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

Provisions as to offences under two or more laws.

33. Where an Act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement of distances.

34. In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

A similar provision is contained in s. 231 of the Municipal Corporations Act, 1882, *ante*, p. 156.

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"Commencement."

36.—(1.) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2.) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

* * * * *

Effect of repeal in future Acts.

38.—(1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2.) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or,

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed ; or Section 38.

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

See *Heston and Isleworth Urban District Council* v. *Grout*, [1897] 2 Ch. 306 ; 66 L. J. Ch. 647 ; 77 L. T. 118 ; 45 W. R. 697 ; 13 T. L. R. 504.

Supplemental.

39. In this Act the expression "Act" shall include a local and personal Act and a private Act. Definition of "Act" in this Act.

40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement. Saving for past Acts.

* * * * *

43. This Act may be cited as the Interpretation Act, 1889. Short title.

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THE PUBLIC BODIES CORRUPT PRACTICES ACT, 1889.

(52 & 53 VICT. c. 69.)

An Act for the more effectual Prevention and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commissions, or other Public Bodies.

[30th August, 1889.]

WHEREAS it is expedient more effectually to provide for the prevention and punishment of bribery and corruption of and by members, officers, or servants of corporations, councils, boards, commissions, and other public bodies:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Corruption in office a misdemeanor.

1.—(1.) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body, as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor.

(2.) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor.

For definitions see sect. 7.

The offence created by this section may be tried at quarter sessions (sect. 6).

A person may be guilty of an offence under this section although he is not a member, officer, or servant of a public body. *Reg.* v. *Edwards*, (1895) 59 J. P. 88.

With regard to corruption in general, reference should be made to the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34), by which an agent (*i.e.* any person employed by or acting for another) who corruptly accepts, and any person who corruptly gives to him, any gift or consideration as an inducement or reward for doing or forbearing to do any act in relation to his principal's affairs or business, is guilty of a misdemeanor.

Section 2.

Penalty for offences.

2. Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted,—

(a) be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and such fine; and

(b) in addition be liable to be ordered to pay to such body, and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and

(c) be liable to be adjudged incapable of being elected or appointed to any public office for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and

(d) in the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office, and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting; and

See 46 & 47 Vict. c. 51, ss. 6, 37, & 39, *ante*, pp. 353, 405; and 47 & 48 Vict. c. 70, ss. 2 and 24, *ante*, pp. 377, 390.

(e) if such person is an officer or servant in the employ of any public body upon such conviction he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.

Savings.

3.—(1.) Where an offence under this Act is also punishable under any other enactment, or at common law, such offence may be prosecuted and punished either under this Act, or under the other enactment, or at common law, but so that no person shall be punished twice for the same offence.

(2.) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

Restriction on prosecution.

4.—(1.) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General.

(2.) In this section the expression "Attorney-General" means the Attorney- or Solicitor-General for England, and as respects Scotland means the Lord Advocate, and as respects Ireland means the Attorney- or Solicitor-General for Ireland.

5. * * * * *

This section, which provided for the expenses of a prosecution under this Act, has been repealed by the Costs in Criminal Cases Act, 1908, *post*. See now the provisions of that Act as to costs.

Section 6.

Jurisdiction of quarter sessions.

6. A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act.

Interpretation.

7. In this Act—

The expression "public body" means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom:

The expression "public office" means any office or employment of a person as a member, officer, or servant of such public body:

The expression "person" includes a body of persons, corporate or unincorporate:

The expression "advantage" includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

* * * * *

Short title.

10. This Act may be cited as the Public Bodies Corrupt Practices Act, 1889.

THE WORKING CLASSES DWELLINGS ACT, 1890.

(53 & 54 Vict. c. 16.)

An Act to facilitate Gifts of Land for Dwellings for the Working Classes in Populous Places. [25th July, 1890.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this Present Parliament assembled, and by the authority of the same, as follows :

Exemption from 51 & 52 Vict. c. 42, Parts I., II., and 7 & 8 Vict. c. 97, s. 16, of gifts for working classes dwellings.

1. Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and section sixteen of the Act of the session held in the seventh and eighth years of Her present Majesty, chapter ninety-seven, intituled "An Act for the more effectual application of charitable donations and bequests in Ireland," shall not apply to any assurance, by deed or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place.

Provided as follows :—

(i.) The quantity of land which may be assured by will under this section shall not exceed five acres ; and

(ii.) The deed or will containing the assurance must, within six months, in the case of a deed after the execution thereof, or in the case of a will after the probate thereof, be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales, and the deed containing the assurance must, within six months after the execution thereof, be registered in the office for registering deeds in the city of Dublin, if the land is situate in Ireland.

For the purposes of this Act, the expression "populous place" means the administrative county of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character.

See 51 & 52 Vict. c. 42, ss. 1—5, *ante*, p. 462. The exemption enacted by this Act is similar to those provided by s. 6 of that Act.

Application of Act.

2. This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act.

Short title and construction.

3.—(1.) This Act may be cited as the Working Classes Dwellings Act, 1890.

(2.) Expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.

51 & 52 Vict. c. 42.

See 51 & 52 Vict. c. 42, s. 10, *ante*, p. 467.

THE POLICE ACT, 1890.

(53 & 54 VICT. c. 45.)

An Act to make provision respecting the Pensions, Allowances, and Gratuities of Police Constables in England and Wales, and their Widows and Children, and to make other provisions respecting the Police of England and Wales. [14th August, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

Superannuation of Constables.

Right of constables to pensions.

1. Subject to the provisions of this Act, every constable in a public force—

(a) if he has completed not less than twenty-five years approved service, and, where a limit of age is prescribed by the pension scale in force under this Act, is of an age not less than the age so prescribed, shall, on the expiration of such time not exceeding four months after he has given written notice to the police authority of his desire to retire as the police authority may fix, be entitled without a medical certificate to retire and receive a pension for life ; and,

(b) if after he has completed fifteen years approved service he is incapacitated for the performance of his duty by infirmity of mind or body, shall be entitled on a medical certificate to retire and receive a pension for life ; and,

(c) if before he has completed fifteen years approved service he is incapacitated for the performance of his duty by infirmity of mind or body, shall be entitled on a medical certificate to retire, and thereupon the police authority may, if they think fit, grant him a gratuity ; and,

(d) if at any time he is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, shall be entitled on a medical certificate to retire and receive a pension for life.

The expression "approved service" is defined by s. 4, *post*. The service need not be continuous in order to entitle the constable to a pension. *Garbutt* v. *Durham Joint Committee*, [1906] A. C. 291 ; 75 L. J. K. B. 459 ; 94 L. T. 525 ; 54 W. R. 596 ; 70 J. P. 265 ; 4 L. G. R. 647 ; 22 T. L. R. 444.

A constable who has retired from a police force without a pension and has subsequently rejoined that force is entitled to reckon his former approved service for the purposes of a pension if he repays to the police authority the amount of any gratuity which may have been granted to him or of any rateable deductions from his pay which may have been paid to him in respect of his previous service. Police (Superannuation) Act, 1906, s. 2, *post*.

As to the position of a constable who has served in more than one police force, see ss. 4 (4) and 14 of this Act, and s. 3 of the Police (Superannuation) Act, 1906, *post*. The amount of the pension or gratuity is determined by the scale in Schedule 1 of this Act.

As to the right of a person who has served both as a civil servant and in a police force to reckon his entire period of service in both capacities for the purpose of pension, see s. 14, *post*; and as to the employment of constables on fire duty, see ss. 1 and 2 of the Police Act, 1893, *post*, p. 530.

As to the rights of a constable who continues to serve in the force after qualifying for a pension, see s. 1 of the Police (Superannuation) Act, 1906, *post*. By s. 6 of that Act retirement is made compulsory for every constable holding a rank above that of inspector after the passing of the Act on his attaining 65 years of age, except as therein provided. A constable who is compelled to retire under that section has the same right to a pension or gratuity as if he had then retired on a medical certificate. *Ibid*.

Pension allowances and gratuities to widow and children.

2.—(1.) If a constable dies whilst in a police force from the effect of an injury received in the execution of his duty without his own default, the police authority shall grant a pension to his widow, and allowances to his children.

(2.) If a constable dies whilst in a police force from any other cause, the police authority may, if they think fit, grant gratuities to his widow and children or any of them.

(3.) If a constable to whom a pension has been granted because he was incapacitated for the performance of his duty by an injury received in the execution of his duty without his own default, dies from the effects of the injury within twelve months after the grant of the pension, the police authority may, if they think fit, grant a pension to his widow, either for a term of years or otherwise.

(4.) If a constable to whom a pension has been granted dies within twelve months after the grant of the pension, the police authority may, if they think fit, grant gratuities to his widow and children or any of them.

The amount of the pension, allowances, and gratuities is determined by the scale in Schedule 1 of this Act, *post*. As to the employment of constables on fire duty, see s. 1 of the Police Act, 1893, *post*.

In the case of a police reservist who was called out on permanent service in the South African campaign the police authority were empowered by 63 & 64 Vict. c. 9, to grant an allowance to his family during his employment on army service, and in case of his death or disablement to grant gratuities as if he had been in the police force.

Pension scale.

3.—(1.) The pensions, allowances, and gratuities granted to constables of a police force and to their widows and children shall be in accordance with the pension scale for the force.

(2.) The pension scale for a police force shall be—

(a) as regards ordinary pensions, a fixed scale adopted by the police authority within the maximum and minimum limits set forth in Part I. of the First Schedule to this Act; and

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(b) as regards special pensions and allowances and gratuities, the scale set forth in Part II. of that Schedule.

(3.) The police authority shall before the first day of January one thousand eight hundred and ninety-one send to the Secretary of State a copy of the scale adopted by them for ordinary pensions.

(4.) If any police authority do not before the said date adopt a fixed scale for ordinary pensions and send a copy thereof to the Secretary of State, the Secretary of State may frame for that authority a fixed scale for ordinary pensions within the maximum and minimum limits set forth in Part I. of the First Schedule to this Act, and that scale shall have the same effect as if it were a scale adopted by the police authority under this section.

(5.) The pension scale for each force shall come into operation on the commencement of this Act.

(6.) A police authority may from time to time adopt and send to the Secretary of State a new scale for ordinary pensions in lieu of the scale for the time being in force, but any such new scale shall not, without the consent of the constable, apply to any constable appointed before the day of its coming into operation.

(7.) The rules contained in Part III. of the First Schedule to this Act shall apply to all pensions, allowances, and gratuities granted under this Act.

Reckoning of service for pension.

4.—(1.) The service of a constable for the purposes of this Act shall be subject to such deductions in respect of sickness, misconduct, or neglect of duty as may be made therefrom in pursuance of the regulations of the force to which the constable belongs; and the expression "approved service" shall for the purposes of this Act mean such service as may after such deductions as aforesaid (if any) be certified under the order of the police authority to have been diligent and faithful service, but shall not, unless the regulations of the police force otherwise prescribe, include service before twenty-one years of age (*a*).

(2.) A certificate signed by the chief officer of a police force as to the period of a constable's approved service in that force shall be sufficient evidence thereof (*b*).

(3.) Where a deduction is made from a constable's service in respect of sickness, misconduct, or neglect of duty, notice of the deduction shall as soon as may be after the occurrence of the cause for which the deduction is made be given to the constable; and the constable may appeal to the chief officer of his police force against any act of an officer of police superior to the constable which prevents him from reckoning any period of actual service as approved service, and any period of actual service allowed by the chief officer on such appeal shall be deemed to be approved service: Provided that, in the case of a borough having a separate police force, the decision of the chief officer shall be subject to the approval of the watch committee.

(4.) Where a constable has served in more than one police force in any part of the United Kingdom, approved service in any such police force in which he has completed not less than three years approved service, and from which he has with the written sanction of the chief

officer of that force removed to another force, shall be reckoned as approved service in the force in which the constable is serving at the time of his retirement (*c*).

(5.) Where a constable with the knowledge of the police authority or of the chief officer of his police force belongs to the army reserve, and is called out for training or for permanent service, he shall be entitled, on returning to the police force after the end of such training or service, to reckon any approved service which he was entitled to reckon at the commencement thereof (*d*).

(*a*) The deductions must not exceed the period of the sickness, misconduct, or neglect of duty, or the period during which the constable is suspended from duty on account thereof. Police (Superannuation) Act, 1906, s. 7, *post*. As to the regulations with respect to deductions, see s. 20, *post*.

(*b*) The function of the chief officer is merely to certify the period of the service; the character of the service as diligent and faithful service must be certified by the police authority under sub-s. (1). *Garbutt* v. *Durham Joint Committee*, [1906] A. C. 291; 75 L. J. K. B. 459; 94 L. T. 525; 54 W. R. 596; 70 J. P. 265; 4 L. G. R. 647; 22 T. L. R. 444. The chief officer's certificate is not conclusive even as to the period of the service. *Ibid.*, per Lord Loreburn, L.C.

In applying the Act to the case of a chief officer of police, the certificate of approved service may be given by a resolution of the police authority (s. 12, *post*).

(*c*) As to the liability of any other police authority with whom the constable has served to contribute a proportionate part of the pension, see s. 15 (2), *post*.

In reckoning the approved service of a constable who joins a police force after the 1st August, 1908, this sub-section is to be read as if two years was substituted for three years as the minimum period of approved service that may be reckoned. Police (Superannuation) Act, 1908 (8 Edw. 7, c. 5), s. 1, *post*. This provision applies also to the case of a constable who has joined before that date, if but not unless he pays to any other police authority, in whose force he may have served and completed not less than two years' approved service, the amount of any rateable deduction from his pay which may have been paid to him in respect of his service in the force of such other police authority. *Ibid.*, s. 2.

This sub-section enables a constable to reckon his approved service in the Royal Irish Constabulary for the purpose of a pension where he has removed from that force to a police force in England. See the note to s. 14, *post*.

The provision in the text applies only to the case where a constable has removed from one police force to another with the written sanction of the chief officer of the force which he has left. Section 3 of the Police (Superannuation) Act, 1906, *post*, provides for the case of a constable who has retired without a pension from a police force and has subsequently joined another force.

(*d*) This provision is extended to constables who belong to any Royal Naval Reserve force by s. 4 of the Police (Superannuation) Act, 1906, *post*, which also provides that the period of service of a naval or army reservist under a Royal proclamation may, if the police authority think fit, be reckoned in the computation of approved service.

Proof of incapacity for duty, liability to serve again, and revision of pension.

5.—(1.) Before granting to a constable an ordinary pension on the ground of his being incapacitated by infirmity for the performance of his duty, the police authority shall be satisfied by the evidence of some legally qualified medical practitioner or practitioners, selected by the police authority, that the constable is so incapacitated, and that the incapacity is likely to be permanent.

(2.) Where the application is for a special pension, the police authority shall also be satisfied that the injury was received by the constable in the execution of his duty, that it was received without the default of the constable, and that the infirmity is attributable to the injury, and shall also determine whether the injury was accidental or not, and whether the disability of the constable for earning his livelihood is total

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or partial; and for the purpose of determining any of the said questions which ought to be determined on medical grounds shall take the like evidence as above mentioned.

(3.) Where a pension is granted to a constable on the ground of incapacity for the performance of his duty, the police authority shall, yearly or otherwise, until the power under this Act of requiring the constable to serve again ceases, satisfy themselves that the incapacity continues, and, unless they resolve that such evidence is unnecessary, shall satisfy themselves by the like evidence as above mentioned.

(4.) In the event of the incapacity ceasing before the time at which the constable would, if he had continued to serve, have been entitled without a medical certificate to retire and receive a pension for life, the police authority may cancel his pension and require him to serve again in the police force, in a rank not less than the rank which he held before his retirement, and at a rate of pay not less than the rate which he received before his retirement.

(5.) Where a constable so serves again, the provisions of this Act as to retirement and pensions, allowances, and gratuities shall apply as if he had not previously retired, save that, except in the case of pensions for non-accidental injuries received in the execution of duty, he shall not reckon as approved service the time which elapsed between his former retirement and the commencement of his service again.

(6.) Where a pension is granted to a constable on a scale applicable to total disability for earning a livelihood, it shall be so granted for such period as may be fixed by the police authority, and, if at the expiration of that period the pensioner continues to be totally so disabled, the pension shall, in the discretion of the police authority, either be made permanent or renewed from time to time. If at any time before the pension is made permanent the police authority are satisfied by the evidence of a legally qualified medical practitioner that the pensioner's disability for earning his livelihood has become partial, the pension shall, within the limits allowed by the pension scale, be reduced to the amount allowed by the provisions of the scale applicable to cases of partial disability.

(7.) If a constable fails or refuses, when required by the police authority, to be examined by some legally qualified medical practitioner selected by that authority, the police authority may deal with the constable in all respects as if they were satisfied by the evidence of such a practitioner that the constable is not incapacited for the performance of his duty or, as the case may be, is only partially disabled.

(8.) The decision of the police authority on the matters above in this section mentioned shall be final, save that in the case of a borough the constable may appeal to the council of the borough, and the decision of the council shall be final.

The police authority cannot cancel a constable's pension under sub-s. (4) without requiring him to serve again; nor can they require him to be examined under sub-s. (7) for any other purpose than that of satisfying themselves as to the state of his health. *Reg.* v. *Lord Leigh*, [1897] 1 Q. B. 132; 66 L. J. Q. B. 56; 75 L. T. 339; 61 J. P. 4; 18 Cox C. C. 425; 13 T. L. R. 41.

Where disability which was originally partial has become total, the pension may be increased under 56 & 57 Vict. c. 10, s. 3, *post*, p. 531.

Part I. Section 6.

Power to reduce pension where infirmity partially due to misconduct.

6. Where a constable retires on account of infirmity of mind or body, and the police authority are satisfied on medical evidence that the constable has brought about or contributed to the infirmity by his own default or his vicious habits, the police authority may, in their discretion, reduce the amount of his pension by an amount not exceeding one half of the pension to which he would be otherwise entitled.

Assignment of pensions and regulations as to payment of pensions, &c.

7. The following provisions shall have effect with respect to every pension, allowance, and gratuity (in this section referred to as a "grant") payable by the police authority to any person (in this section referred to as the pensioner):—

(1.) Every assignment of and charge on a grant, and every agreement to assign or charge a grant, shall, except so far as made for the benefit of the family of the pensioner, be void, and on the bankruptcy of the pensioner the grant shall not pass to any trustee or other person acting on behalf of the creditors:

(2.) Where any parochial relief is given to a pensioner or to any one whom he is liable to maintain, the police authority may pay the whole or any part of the grant to the guardians or other authority giving the relief, and the same, when so paid, may be applied in repayment of any sums expended in such relief, and, subject thereto, shall be paid or applied by the guardians or other authority to or for the benefit of the pensioner:

(3.) If the pensioner neglects to maintain any person whom he is liable to maintain, the police authority may in their discretion pay or apply the whole or any part of the grant to or for the benefit of that person:

(4.) If the pensioner appears to the police authority to be insane or otherwise incapacitated to act, the police authority may pay so much of the grant as the police authority think fit to the institution or person having the care of the pensioner, and may pay the surplus (if any) or such part thereof as the authority think fit for or towards the maintenance and benefit of the wife or relatives of the pensioner:

(5.) On the death of a pensioner to whom a sum not exceeding one hundred pounds is due on account of a grant, then, if the police authority so direct, probate or other proof of the title of the personal representative of the deceased may be dispensed with, and the sum may be paid or distributed to or among the persons appearing to the police authority to be beneficially entitled to the personal estate of the deceased pensioner, or to or among any one or more of those persons, or in case of the illegitimacy of the deceased pensioner, to or among such persons as the police authority may think fit, and the police authority, and any officer of the police authority making the payment, shall be discharged from all liability in respect of any such payment or distribution:

(6.) Any sum payable to a minor on account of a grant may be paid either to the minor or to such person and on such conditions for the benefit of the minor as to the police authority seems expedient:

Part I. Section 7.

(7.) Where a payment is made to any person by a police authority in pursuance of this section, the receipt of that person shall be a good discharge to that authority for the sum so paid :

(8.) A police authority may, with the consent of the Secretary of State, make rules with respect to declarations to be taken for any purpose relating to grants payable by that authority, and while any such rules made by a police authority are in force, a person shall not be entitled to receive any sum in respect of a grant payable by that authority until any declaration required by those rules has been made.

Forfeiture of pension or allowance.

8. A pension or allowance under this Act is granted only upon condition that it becomes forfeited, and may be withdrawn by the police authority, in any of the following cases :—

(a) if the grantee is convicted of any offence for which he is sentenced to penal servitude or to imprisonment for a term exceeding three months with hard labour, or to imprisonment for a term exceeding twelve months, whether with or without hard labour ; or

(b) if the grantee knowingly associates with thieves or reputed thieves ; or

(c) if the grantee refuses to give to the police all information and assistance in his power, for the detection of crime, for the apprehension of criminals, and for the suppression of any disturbance of the public peace ; or

(d) if the grantee enters into or continues to carry on any business, occupation, or employment which is illegal, or in which he has made use of the fact of his former employment in the police in a manner which the police authority consider to be discreditable and improper.

Such forfeiture and withdrawal may affect the pension wholly or in part, and may be permanent or temporary, as the police authority may determine.

Three additional grounds of forfeiture have been introduced by s. 5 of the Police (Superannuation) Act, 1906, *post*, viz. (e) the publication of confidential information ; (f) the acceptance of a testimonial or gift on retirement from the police ; (g) employment as a private detective after being prohibited.

Punishment for obtaining pension, &c. by fraud.

9. If a person obtains or attempts to obtain for himself or for any other person any pension, gratuity, or allowance under this Act, or any payment on account of any such pension, gratuity, or allowance, by means of any false declaration, false certificate, false representation, false evidence, or personation, or by malingering or feigning disease or infirmity, or by maiming or injuring himself, or causing himself to be maimed or injured, or otherwise producing disease or infirmity, or by any other fraudulent conduct, he shall be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding four months or to a fine not exceeding twenty-five pounds, to be paid (notwithstanding anything in any charter or in any other Act whether relating to municipal corporations or otherwise) to the pension fund of the force from which he obtained or attempted to obtain the pension,

gratuity, or allowance, and on conviction by a jury to imprisonment, with or without hard labour, for a term not exceeding two years, and also, in either case, to forfeit any pension, gratuity, or allowance so obtained.

Saving of right of dismissal and reduction in rank.

10. Nothing in this Act shall prejudice the existing right of any police authority to dismiss any constable, or to reduce him to any lower rank or lower rate of pay, or shall prevent his claim to pension from being refused on account of misconduct, or of negligence in the discharge of his duties, or on account of any of the grounds on which his pension if granted would be liable to be forfeited and withdrawn.

As to the right to dismiss a constable, see s. 191 (4) of the Municipal Corporations Act, 1882, *ante*, p. 134, and 3 & 4 Vict. c. 88, s. 15, *ante*, p. 216.

Appeal in case of forfeiture or refusal of pension or allowance.

11. In any of the following cases—

(a) where a pension after being granted to a constable has subsequently in pursuance of this Act been declared to have been forfeited, and

(b) Where a constable is dismissed without a pension to which he would be otherwise entitled, and in any other case where a constable, or the widow or child of a constable, claims a pension or allowance under this Act as of right, and the police authority do not admit the claim,

the constable, widow, or child may apply to the police authority for a re-consideration of the claim to the pension or allowance, and if aggrieved by the decision upon such re-consideration may apply to the next practicable court of quarter sessions for the county within which the constable last served ; or if the constable last served in the police force of a borough having a separate police force and a separate court of quarter sessions, then to the next practicable court of quarter sessions for that borough, and that court, after inquiry into the case, may make such order in the matter as appears to the court just, which order shall be final ; but nothing in this section shall confer a right to appeal against the exercise of any discretion, or against any decision which is declared by this Act to be final.

The King's Bench Division has no jurisdiction to entertain a case stated by Quarter Sessions in regard to any matter decided by them under this section. *Kydd* v. *Liverpool Watch Committee*, [1908] A. C. 327 ; 77 L. J. K. B. 947 ; 99 L. T. 212 ; 72 J. P. 395 ; 6 L. G. R. 903 ; 24 T. L. R. 772. No objection was made on this ground to the hearing of the case stated in *Upperton* v. *Ridley*, *post*, p. 506, or in *Garbutt* v. *Durham Joint Committee*, *ante*, p. 489.

Application of Act to chief officer of police.

12. The provisions of this Act shall apply to a chief officer of police and to the assistant commissioners of the metropolitan police in like manner, so nearly as circumstances admit, as they apply to any other constable, except that, in the case of a chief officer, the certificate of approved service and the sanction to removal from one force to another may be given by a resolution of the police authority, and that nothing in this section shall make any pension which is now payable out of money provided by Parliament payable from any other source.

As to the certificate of approved service and the sanction to removal from one force to another, see s. 4 (2), (4), *ante*.

Part I. Section 13.

Suspension of pension in case of appointment to new office.

13.—(1.) Where a constable in receipt of a pension under this Act from a police authority takes service in any police force, his pension may be suspended by that police authority in whole or in part so long as he remains in that service.

(2.) If a constable in receipt of a pension under this Act is appointed to an office remunerated out of money provided by Parliament or out of a county or borough rate or fund, he shall not, while holding that office, receive more of the pension than together with the remuneration of that office is equal to one and a half times the remuneration of the office in respect of which the pension was awarded.

See *Nott Bower* v. *Liverpool Corporation*, (1904) 68 J. P. 243; 2 L. G. R. 494; 20 T. L. R. 261.

The provisions of sub-s. (2) are made applicable to a constable in receipt of a pension who is appointed to any office remunerated out of any parochial, district, or other rate by 56 & 57 Vict. c. 10, s. 4, *post*, p. 531.

Provision as to service in more than one capacity. 50 & 51 Vict. c. 67.

14. Where a person has served in two or all of the following capacities—

(i.) as a civil servant within the meaning of the Superannuation Act, 1887;

(ii.) in a police force with a salary paid out of the police fund;

(iii.) in a police force with a salary paid out of money provided by Parliament;

he shall be entitled to reckon his entire period of service in both or all capacities for the purpose of pension, and the pension shall be on the scale and subject to the statutory requirements affecting pensions in the service from which he last retires.

Provided as follows:—

(1.) For the purposes of the pension three years of police service shall be reckoned as equivalent to four years of service as a civil servant, and conversely; and

(2.) The pension shall be payable from money provided by Parliament, and from the police pension fund in such proportions as the Treasury may determine, regard being had to the period of service and the salary received in each capacity.

The Royal Irish Constabulary is a police force with a salary paid out of money provided by Parliament, and service in that force is therefore to be reckoned for the purpose of pension under this section. The definition of "police force" in s. 33, *post*, does not apply to this case. *R.* v. *Treasury Commissioners*, [1909] 2 K. B. 183; 78 L. J. K. B. 680; 100 L. T. 896; 73 J. P. 299; 7 L. G. R. 746; 25 T. L. R. 450.

A *mandamus* may be granted directing the Treasury to determine the proportions in which the pension is payable under the second proviso to this section. *Ibid.* As to the reckoning of the period of service of a naval or army reservist under a Royal proclamation, see s. 4 of the Police (Superannuation) Act, 1906, *post*.

Rateable deductions from pay to be carried to pension fund.

15.—(1.) The public authority of every police force shall deduct from the pay of every constable in the force—

(a) sums at a rate not exceeding two and a half per cent. per annum on his pay (in this Act referred to as the rateable deduction); and

(b) such stoppages during sickness, and such fines for misconduct, as may be provided by the regulations respecting the force.

(2.) Where a constable has removed to some other force or forces with the written sanction of the chief officer of any force he has removed from, and such constable in due course becomes entitled to and is awarded a pension, the police authority in whose service he then is shall be entitled to call upon the other police authority or authorities with whom he shall have served approved service, and they shall contribute a proportionate part of any pension to such constable reckoned according to the approved service and pay of such constable during his service in such force, and the said proportionate part shall be settled by agreement between the police authorities, or in default of agreement by an arbitrator appointed by the Secretary of State.

As to regulations with respect to deductions and stoppages of pay, see s. 20, *post*.

Sub-s. (2) of this section does not apply where a constable who has retired without a pension subsequently joins another force and is allowed to reckon in his approved service the period which he was entitled to reckon at the end of his service in the first-mentioned force. Police (Superannuation) Act, 1906, s. 3, *post*.

Establishment of pension fund, and fines, fees, &c., to be carried to fund.

16.—(1.) There shall be a pension fund of every police force, and there shall be carried to that fund—

(a) the deductions (including stoppages and fines) made in pursuance of this Act from the pay of the constables in the force; and

(b) the fines imposed by a court of summary jurisdiction, when imposed on constables in the force, or for assaults on constables in the force, and the fines or portions of fines imposed by a court of summary jurisdiction for other offences, and awarded to informers being constables in the force; and

(c) such fines or portions of fines, and such fees payable to or received by constables, as by any Act are directed or authorised to be carried to the superannuation or pension fund of the police force; and

(d) the net sums arising from the sale of worn or cast clothing supplied for the use of constables of the force; and

(e) such proportion of any sum received on account of constables whose services have been lent in consideration of payment as the police authority may consider to be a fair contribution to the pension fund in respect of those constables; and

(f) any payments or contributions payable under the provisions of any local and personal Act to the pension or superannuation fund of any police force, whether out of any fund, rate, or account under the control of the police authority, or payable by any other authority, board, or persons; and

(g) all dividends and other annual sums received in respect of the investments of the pension fund.

(2.) Unless the authority having control of the fund to which the sums herein-after mentioned would but for this section be carried otherwise resolve, and except so far as the said sums are subject to the foregoing provisions of this section, there shall also be carried to the pension fund of every police force the following sums, namely:—

(h) The net sums received in the police area for pedlars and chimney sweepers certificates; and

(i) All fees payable to or received by any constable of the force in

Part I. Section 16.

the execution of his duty as such, or in the execution of any other duty which may be required to be performed by any constable of the force; and

35 & 36 Vict. c. 94. 37 & 38 Vict. c. 49.

(k) The fines imposed by a court of summary jurisdiction for offences under the Licensing Acts, 1872 and 1874, when committed within the police area, or for any offence under a general or local Act similar to any of the above offences.

(3.) The police authority may also direct any sums under the control of the police authority in that capacity, or under the control of the police force, or of any member thereof in that capacity, to be carried to the pension fund, provided that this direction shall not be given in the case of any fund held on a private trust.

(4.) Any resolution passed for the purposes of this section may be revoked or varied.

(5.) The provisions of this section shall have effect notwithstanding anything in any charter or in any other Act, whether relating to municipal corporations or otherwise.

As to deductions from the pay of constables, see s. 15, *ante*.

A fee of five shillings is payable for a pedlar's certificate under 34 & 35 Vict. c. 96, s. 5; and a fee of two shillings and sixpence for a chimney sweeper's certificate under 38 & 39 Vict. c. 70, s. 10. In each case the certificate is granted by the chief officer of police for the district, and remains in force for one year.

As to fines imposed under the Licensing Acts, see 35 & 36 Vict. c. 94, s. 66. See also s. 221 of the Municipal Corporations Act, 1882, *ante*, p. 148.

Distribution of sums granted out of Customs and Excise duties for police superannuation.

17.—(1.) Any annual sum which under an Act passed in the present session relating to the distribution of certain duties of Customs and Excise is required to be distributed among the police authorities of the police forces in England and Wales, other than the Metropolitan police force (which sum is in this Act referred to as the Exchequer contribution), shall be distributed according to the following basis of distribution, that is to say:—

(a) There shall be paid in every financial year to the police authority of every such police force a sum equal to the amount of the rateable deductions made during the year ending the twenty-ninth day of September last preceding the end of the financial year from the pay of the constables belonging to that force, and that sum shall be carried to the pension fund.

(b) The residue shall at the same time be distributed among the police authorities of those forces in proportion to the amounts paid during the year ending the twenty-ninth day of September last preceding the end of the financial year in respect of pensions, allowances, and gratuities out of their pension funds respectively, and the proportion to be paid to each force shall be carried to the pension fund.

(2.) Provided that a police authority shall not in respect of any year receive any payment under this section unless the Secretary of State gives a certificate that the management and efficiency of the police force under that authority and the administration of the pension fund of that force have during that year been satisfactory; and, if the Secretary of State withholds that certificate as regards any police authority, the

amount which would otherwise be payable to that authority under this section shall be forfeited to the Crown and paid into the Exchequer.

(3.) Before any such certificate is finally withheld in respect of any police force, the Secretary of State shall communicate with the police authority of the force, and that authority may address any statement on the subject to the Secretary of State; and in every case in which the certificate is withheld a statement of the grounds on which the Secretary of State has withheld his certificate, together with any such statement of the police authority, shall be laid before Parliament.

(4.) The sums to be paid to each police authority under this section shall be certified by the Secretary of State, who may, if he thinks proper, vary his certificate, but unless it is so varied his certificate shall be conclusive.

(5.) Where owing to any special circumstances affecting any particular police force the sum payable to that force under the foregoing provisions of this section would, in the opinion of the Secretary of State, be inequitable as between that force and some other force or forces, the Secretary of State may make such modification in the basis of distribution as appears to him to be necessary to meet the equities of the case.

(6.) The basis of distribution under this section may also be varied in such manner and in accordance with such conditions as may from time to time be set forth in regulations made by the Secretary of State and submitted to Parliament. All such regulations shall be laid on the table of both Houses of Parliament, and shall not come into operation until they have lain on the table of each House for not less than thirty days on which that House has sat.

(7.) This section shall come into operation on the passing of this Act.

The Act which is referred to in this section is the Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), under which the annual sum of £300,000 out of the English share of the local taxation duties is applicable for the purposes of police superannuation, and one half of it is to be distributed among the police forces in England other than the metropolitan police force and that of the City of London (ss. 1, 4).

Accounts and investment of pension fund.

18.—(1.) All sums which, in pursuance of this Act, are to be carried to the pension fund of a police force shall be accounted for and paid to the treasurer of that fund in such manner as the police authority may direct, and may be dealt with as annual income of the pension fund.

(2.) The pension fund of a police force shall be kept as a separate fund, but the treasurer of the police fund shall be the treasurer of the pension fund, and all enactments and regulations relating to the accounts of the police fund, and to the making up, audit, and publication thereof, and to the power of disallowance and otherwise shall, so nearly as circumstances admit, apply to the pension fund.

(3.) At the end of each financial year the surplus of the annual income of the pension fund above the expenditure thereout shall, as soon as may be, be invested in such name as the police authority direct, and in any manner authorised by law for investments by trustees, and all investments on account of the fund, under this section or otherwise, are in this Act referred to as the capital of the pension fund.

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(4.) The capital of the pension fund shall not be applied for paying any sums payable out of that fund.

The powers of investment conferred by this section are extended by 56 & 57 Vict. c. 10, s. 5, *post*, p. 531.

Guarantee of pension fund by police fund.

19.—(1.) If at any time the annual income of the pension fund is insufficient to pay the expenses of managing the fund, and the pensions, allowances, gratuities, and other sums payable thereout, the deficiency shall be supplied out of the police fund.

3 & 4 Vict. c. 88. 19 & 20 Vict. c. 69.

(2.) In the case of a county divided into districts within the meaning of section twenty-seven of the County Police Act, 1840, as amended by section four of the County and Borough Police Act, 1856, the deficiency shall be supplied by the several districts, as part of the local expenditure thereof, rateably in proportion to the number of constables appointed for each such district.

(3.) Where the police force of a borough has been consolidated with the police force of a county, the deficiency shall be supplied out of the police funds of the county and borough respectively in accordance with an agreement between the police authorities for the county and borough made in the same manner and subject to the same conditions as an agreement to consolidate the police force of a borough with the police force of a county can be made, and in default of any such agreement shall be supplied in such manner as may be determined by an arbitrator appointed by the Secretary of State.

(4.) Where the rate which can be levied for the police fund is limited, an addition to that rate may be levied for the purpose of raising the sum required to supply the deficiency.

Power for police authority to make regulations.

20.—(1.) Every police authority may make regulations consistent with this Act with respect to the deductions from a constable's service for sickness, misconduct, or neglect of duty, and with respect to stoppages of pay during sickness and fines for misconduct, and with respect to the mode in which pensions are to be paid, and otherwise for the purpose of giving effect to the provisions of this Act.

(2.) All regulations for a police force made before the commencement of this Act with respect to any of the above matters shall have effect as if made under the powers given by this section.

As to deductions from a constable's service, see s. 4 (1): and as to stoppages of pay, see s. 15 (1), *ante*.

Power to return rateable deductions on leaving force.

21. If a constable not having been dismissed leaves a police force without a pension or gratuity, the police authority may, if it seems to them just, pay him the whole or part of the rateable deductions which have been made from his pay; but this section shall not apply in the case of his being removed to another force under such circumstances as will enable him to reckon his approved service in the force from which he removes.

See s. 4 (4), *ante*, and s. 3 of the Police (Superannuation) Act, 1906, *post*.

Provisional orders by Secretary of State.

22.—(1.) Where it appears to a police authority that the assets of their pension fund exceed the amount required for meeting the liabilities thereon and that it is expedient to provide for the application of the

excess or any part thereof, the police authority may apply to the Secretary of State, and thereupon the Secretary of State may frame and submit to Parliament for confirmation a provisional order authorising the payment out of the pension fund of such sums, for such purposes, during such period, and subject to such conditions as may seem expedient.

(2.) Where it appears to a police authority that by reason of their pension fund being sufficient to meet the liabilities thereon it is unnecessary to make any further investments on account of the capital thereof, the police authority may apply to the Secretary of State, and thereupon the Secretary of State may frame and submit to Parliament for confirmation a provisional order authorising the discontinuance of those investments.

(3.) Where a local Act provides for the payment to members of a special force in any police area of the same pension, superannuation, or other allowances or gratuities as are by that local Act provided for the police force of the area, the authority controlling the special force may apply to the Secretary of State, and thereupon the Secretary of State may frame and submit to Parliament for confirmation a provisional order providing—

(i.) for the adjustment of any financial relations existing at the commencement of this Act between the police force and the special force as regards the payment of pensions, allowances, and gratuities to members of those forces respectively; and

(ii.) for applying with or without modification all or any of the provisions of this Act to the special force.

(4.) A provisional order under this section shall be of no force unless and until it is confirmed by Act of Parliament, but when so confirmed shall have effect with any modifications made therein by Parliament.

(5.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to that order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(6.) All costs charges and expenses incurred by the Secretary of State in relation to any order under this section shall be defrayed by the authority applying for the order.

(7.) For the purposes of this section the expression "special force" means a fire brigade, fire police, or other like force.

Part II.

General Amendment of Acts.

Table of fees.

23.—(1.) Every police authority may from time to time, and shall at least once in every five years, submit for approval to a Secretary of State a table of fees payable to constables in respect of the service of summonses, the execution of warrants, and the performance of other occasional duties which may be required of the constables under that authority, and in respect of the performance of any other act done by

Part II. Section 23.

constables in the execution of their duty, and the Secretary of State may approve of the table, with or without modification.

(2.) Every police authority shall also provide for those fees being duly accounted for and being paid duly to the treasurer of that authority, and those fees shall, subject to the provisions of this Act, be applied in manner provided by the enactments relating to the police force of that authority, and so far as those enactments do not extend, then in aid of the police fund of that authority.

(3.) A constable may receive any fee mentioned in a table for the time being approved not more than five years previously by a Secretary of State, but no other fee shall be taken by a constable for any service performed by him.

(4.) Every constable shall duly account in accordance with the provisions made as above mentioned for any fee taken by him.

Amendment of 22 & 23 Vict. c. 32, s. 24, as to amount of gratuity.

24. So much of the County and Borough Police Act, 1859, as limits the amount of the gratuity which may be granted as a reward for a meritorious act done by a constable in the execution of his duty is hereby repealed.

Assistance by one police force to another.

25.—(1.) Where a police authority deem it expedient for any special emergency or under any exceptional circumstances to strengthen their police force (in this section referred to as the aided force) by constables belonging to another police force, such number of constables belonging to the latter force may be added to the aided force, and for such period as may be agreed on between the police authorities of the forces; and the constables so added, notwithstanding that they have not been sworn in or taken any declaration as constables of the aided force, shall, during that period, be deemed, save as otherwise provided by the agreement, to be for all purposes constables of the aided force, and shall have the like powers, duties, and privileges.

(2.) The agreement may be made for a particular occasion or as a standing agreement, and with reference either to recurring or to unforeseen events, or otherwise, as may be thought expedient.

(3.) Any power conferred on a police authority by this section or by any agreement made thereunder may (subject to anything in the agreement to the contrary) be delegated by that authority to their chief officer of police by any general or special order, and with or without any exceptions, restrictions, or conditions.

(4.) An agreement under this section may contain such terms as to the command of the constables added to the aided force, and as to the expenses (including the pay and allowances of the constables so added and provision for pensions, gratuities, and allowances in the event of those constables being killed or injured) and otherwise, as may seem expedient.

(5.) An agreement may be made by a police authority with more police authorities than one.

Where a borough police force is strengthened in the manner provided by this section, the council of the borough is entitled to be paid by the county council under s. 24 (2) (j) of the Local Government Act, 1888, *ante*, p. 419, one half of the cost of the pay and clothing of the constables added to their force, as if the added constables

were members of the borough police force. *Reg.* v. *West Riding County Council*, [1895] 1 Q. B. 805; 64 L. J. M. C. 145; 72 L. T. 520; 43 W. R. 386; 59 J. P. 340; 18 Cox C. C. 141.

Declaration by constables respecting previous service.

26. A police authority may require every constable at the time of his appointment to appear before a justice of the peace, and make and sign a declaration as to his previous service in a police force or public employment, in the form contained in the Second Schedule to this Act, or to the like effect; and if any constable knowingly makes a false declaration, he shall be liable, on summary conviction, to be imprisoned, with or without hard labour, for any period not exceeding three months.

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Part III.

Temporary and Supplemental Provisions.

Application of Act to existing funds and constables.

30. For the purpose of adapting the provisions of Part One of this Act to existing pension or superannuation funds and existing constables, (that is to say, to constables appointed to police forces, and to the pension or superannuation funds established for those forces, before the commencement of this Act, whether under any general or local Act, or otherwise) the following provisions shall have effect:

(1.) As soon as may be after the commencement of this Act, the amount of every existing pension or superannuation fund of a police force shall, where it is not already held by the treasurer of the police fund of that force, be transferred by the persons holding the same to such persons as the police authority may direct, to be held and dealt with as part of the pension fund under this Act, and as part of the capital or income thereof, as the case may require:

(2.) Where the Exchequer contribution to the police authority of a police force becomes payable before any existing fund of the force which is required to be so transferred is so transferred, or, in the case of a police force not having any such fund, before a pension fund is established for the force in pursuance of this Act, the payment of the contribution shall be deferred until the Secretary of State has certified that the fund is so transferred or established:

(3.) Where the police force of a borough has been consolidated with the police force of a county, and the existing pension or superannuation fund of the police force of the borough has not been transferred to the county treasurer, that fund shall be transferred in accordance with the foregoing provisions of this section, as soon as may be after the commencement of this Act, by the persons holding the same, and, in the absence of any agreement between the police authorities for the county and borough, the income of that fund shall be applied in paying the superannuation and other allowances charged thereon at the date of the transfer, and, subject thereto, in paying the pensions, allowances, and gratuities to constables employed in the consolidated force, and their widows and children, in such

Part III. Section 30.

22 & 23 Vict. c. 32.
28 & 29 Vict. c. 35.
51 Vict. c. ix.

manner as may be determined by an arbitrator appointed by the Secretary of State:

(4.) In Lincolnshire section twenty-two of the County and Borough Police Act, 1859, and sections six, seven, and eight of the Police Superannuation Act, 1865, as amended by the Lincolnshire Police Superannuation Act, 1888, shall, so far as is consistent with the tenor thereof, apply to the pension fund under this Act in like manner as if it were the superannuation fund in those sections mentioned:

(5.) Every police authority shall, within fourteen days after a pension scale has been adopted by or framed for the police authority in pursuance of this Act, cause written notice to be given to every constable in the police force under that authority, requiring him to inform that authority in writing before the date of the commencement of this Act, whether he does or does not accept the provisions of this Act in lieu of the existing enactments respecting superannuation:

(6.) This Act shall not apply to any existing constable who, before the date of the commencement of this Act, whether any such notice has or has not been given to him, declines in writing to accept the provisions of this Act; but save as aforesaid this Act shall apply to all existing constables; and those constables shall be deemed to have surrendered in favour of the police authority all right to any provision made before the commencement of this Act, either wholly or partly, by the police authority for the superannuation of such constables, or, in case of their death, for their widows and children or any of them, whether that provision is made by an annual allowance, insurance, or otherwise:

(7.) If by reason of the police authority not having given such notice as aforesaid an existing constable becomes entitled to a less pension than he would have been entitled to receive if this Act had not passed, he may apply to the police authority, and the police authority may make such order as may seem just for the purpose of preventing the constable from suffering any loss by reason of the notice not having been given:

(8.) In the case of any existing constable to whom this Act applies, his approved service for any period before the commencement of this Act in the force in which he is serving at the time of his retirement shall be reckoned as approved service; and his service for not less than three years either wholly or partly before the commencement of this Act in any police force in any part of the United Kingdom from which he removed with the sanction of the chief officer or police authority of that force to another force, shall (notwithstanding the sanction was not given in writing) be reckoned as approved service for the said period in the last-mentioned force, unless the police authority who give him the notice respecting the acceptance of this Act, inform him in writing at the time of such notice that they refuse to allow the said service to be reckoned, but their

refusal shall not prevent the reckoning of that service under any other provision of this section:

(9.) Any description of service before the commencement of this Act, either in a police force or otherwise, which any existing constable to whom this Act applies is at the commencement of this Act entitled to reckon as service for any period towards superannuation out of the existing pension or superannuation fund of his police force, and which is not reckoned under any other provision of this Act, shall be reckoned for the same period for the purposes of pension under this Act: In the case of any existing constable to whom this Act applies, who has served not less than ten years before the commencement of this Act in a police force in which the police authority have heretofore, under the provisions of former Acts, granted pensions of higher amount than authorised by the scale adopted by that police authority under the provisions of this Act, and who becomes entitled to a pension under this Act, then, notwithstanding anything in this Act, the pension may, if the police authority think fit, exceed the amount prescribed in the adopted scale so as it does not exceed the amount which might have been granted if this Act had not passed:

(10.) Provided that if, in the case of any existing constable, rateable deductions or other payments towards superannuation or insurance have not, during the period of the service which he is entitled to reckon for the purpose of calculating his pension under this Act, or for some part of such period not less than ten years, been made, and contributions have not been made from other sources to a superannuation fund in lieu of the rateable deductions not so made, the pension granted under this Act to such constable may, if the police authority think fit, be reduced by an annual amount equal to such deferred annuity as could, according to the tables for the purchase of deferred annuities from the Commissioners for the Reduction of the National Debt through the medium of the Post Office, have been purchased by rateable deductions made at the rate fixed under this Act during the said period of service, or the part thereof during which such deductions or payments were not made.

As to the rights of existing constables apart from this Act, see s. 36, *post*.

Act to supersede local Acts.

31. The provisions of this Act shall have effect, notwithstanding anything in any other Act, general or local, to the contrary.

* * * * *

Police areas and authorities.

33. In this Act, unless the context otherwise requires,—

The expression "police area" means one of the areas set forth in the first column of the Third Schedule to this Act; and the expressions "police authority," "chief officer of police," and "police fund," mean, as respects each police area, the authority, officer, and fund respectively mentioned opposite to that area in the second, third, and fourth columns of that schedule; and the expression "police

Part III. Section 33.

force" means a force maintained by one of the police authorities mentioned in the said schedule (*a*):

Provided as follows:—

(1.) In the case of a county the powers of the police authority under this Act with respect to the accounting for and payment of sums to be carried to the pension fund or police fund, and with respect to investments, shall be exercised by the county council, and any sum payable under this Act by the police authority shall be payable by the county council on the requisition of the standing joint committee of the quarter sessions and the county council (*b*);

(2.) Any contributions required to meet payments out of the county fund for the purposes of this Act shall be assessed in like manner as contributions to meet the expenses of the police force;

(3.) The exercise of the powers conferred by this Act on the watch committee of a borough shall be subject to the approbation of the council of the borough.

(*a*) The definition of "police force" in this section does not apply to the police force with a salary paid out of money provided by Parliament, which is referred to in s. 14, *ante*. See the note to that section.

(*b*) See ss. 16—19, *ante*.

Definitions.

34. In this Act, unless the context otherwise requires,

The expression "treasurer" includes any receiver, chamberlain, or other officer, by whatever name known, who performs the duties of treasurer in relation to any police fund:

The expression "fine" includes a pecuniary penalty:

The expression "fee" does not include any reward paid to an individual constable by direction of the Admiralty, or of any military authority, or of a Secretary of State not acting as the police authority, or any gratuity paid to a constable for a meritorious act done in the execution of his duty.

Saving for existing pensions.

35. Notwithstanding anything in this Act or in any repeal by this Act every person in receipt of any pension, superannuation, or other allowance at the commencement of this Act shall continue to be entitled to receive the same, subject to the same limitations and conditions as before the commencement of this Act, and the same shall not be altered under this Act, and shall, save as otherwise expressly provided by this Act, be paid out of the like funds, as nearly as may be, as if this Act had not passed.

Repeal.

36. The Acts mentioned in the Fourth Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned, and so much of any other Act as regulates the superannuation of any police force in England and Wales, or is inconsistent with this Act, is also hereby repealed:

Provided that—

(1.) This repeal shall not affect the right of any police authority to grant any pension or superannuation or other allowance or gratuity to any existing constable to whom this Act does not

apply, or to the widow and child of any such constable, or either of them, and shall not affect the right of any such constable, widow, or child to claim such pension, or superannuation or other allowance or gratuity, and any such pension, allowance, or gratuity may be granted and claimed accordingly, and the claim shall be allowed as if this Act had not passed, but the pension, allowance, or gratuity shall be paid out of the pension fund :

(2.) This repeal shall not prevent any constable from reckoning as approved service any service which he is entitled under any enactment hereby repealed to reckon towards pension or superannuation :

(3.) Any table of fees made in pursuance of any enactment hereby repealed shall continue in force in like manner as if it had been at the date of the commencement of this Act approved by the Secretary of State in pursuance of this Act :

(4.) Nothing in this section shall repeal any enactment so far as it relates to any fire brigade, fire police, or other force to which or to the members whereof the provisions of this Act do not apply.

As to the application of the Act to existing constables, see s. 30 (6), *ante ;* and as to the right to reckon service before the commencement of the Act, see s. 30 (9), *ante.*

Commencement of Act.

37. This Act shall come into operation on the first day of April one thousand eight hundred and ninety-one, except as to anything which is by this Act required or authorised to be done before that date, and except as to any provision which is expressed to come into operation on the passing of this Act.

Short titles.

38.—(1.) This Act may be cited as the Police Act, 1890.

(2.) The Acts mentioned in the Fifth Schedule to this Act are in this Act referred to and may be cited by the short titles respectively in that schedule mentioned, and may be cited collectively by the short title at the commencement of that schedule mentioned.

(3.) The Metropolitan Police Acts, 1829 to 1887, and this Act may be cited together as the Metropolitan Police Acts, 1829 to 1890.

(4.) The Acts mentioned in the said Fifth Schedule and this Act may be cited together as the Police Acts, 1839 to 1890.

For the purposes of this Act ss. 190—194 of the Municipal Corporations Act, 1882, are to be deemed to form part of the Police Acts. Schedule 5, *post.*

Act not to apply to City.

39. This Act shall not apply to the City of London Police.

Extent of Act.

40. This Act shall not extend to Scotland or Ireland.

As to the right of a constable in an English police force to reckon for the purposes of pension his prior service in the Royal Irish Constabulary, see the note to s. 14, *ante.*

Schedule 1, Part I.

SCHEDULES.

Section 3.

FIRST SCHEDULE.

PENSION SCALE.

PART I.

Ordinary Pensions.

(1.) The pension of a constable on retirement shall be within the maximum and minimum limits following; that is to say,

(a) if he has completed fifteen but less than twenty-one years approved service, an annual sum not less than one sixtieth nor more than one fiftieth of his annual pay for every completed year of approved service; and

(b) if he has completed twenty-one but less than twenty-five years approved service, an annual sum not less than twenty sixtieths nor more than twenty fiftieths of his annual pay, with an addition of not less than two sixtieths and not more than two fiftieths of his annual pay for every completed year of approved service above twenty years; and

(c) if he has completed twenty-five years approved service, an annual sum not less than thirty sixtieths nor more than thirty-one fiftieths of his annual pay, with an addition of not less than one sixtieth nor more than three fiftieths of his annual pay for every completed year of approved service above twenty-five years, so however that the pension shall not exceed two thirds of his annual pay.

(2). Where a limit of age is fixed below which a constable is not to be entitled to retire on a pension without a medical certificate, it shall be not less than fifty years and not more than fifty-five years, or in the case of a constable above the rank of sergeant, not more than sixty years, but it shall not be obligatory on a police authority to fix any such limit.

"Annual pay" means the ordinary pay of the rank to which the constable belonged, and does not include an allowance for special duties. *Upperton* v. *Ridley*, [1903] A. C. 281; 72 L. J. K. B. 535; 88 L. T. 642; 67 J. P. 349; 20 Cox C. C. 453; 1 L. G. R. 659; 19 T. L. R. 522. See also *Liverpool Watch Committee* v. *Kydd*, (1907) 98 L. T. 24; 72 J. P. 63; 6 L. G. R. 907.

Where a police inspector was required to reside at the police station and lived there free of rent and rates, and had the free use of fuel, gas, and water, it was held that the value of such emoluments did not form part of his annual pay. *Goodwin* v. *Sheffield Corporation*, [1902] 1 K. B. 629; 86 L. T. 682; 66 J. P. 533; 18 T. L. R. 441.

The gradations of rank and pay of constables are determined by the police authority. As to the meaning of the term "walking inspector" in a scale of pensions, see *Story* v. *Nottinghamshire Standing Joint Committee*, (1907) 72 J. P. 31; 6 L. G. R. 1018.

PART II.

Maximum of Gratuity to Constable.

(3.) Any gratuity on retirement to a constable who is incapacitated for the performance of his duty shall not exceed the amount of one month's pay for every completed year of approved service.

Special Pensions.

(4.) The pension of a constable who is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, shall vary according as the injury is or is not accidental, and according as the constable is partially or totally disabled from earning his livelihood.

A pension granted on the scale applicable to partial disability may, if the disability has become total, be increased within three years to the amount allowed by the scale in case of total disability. 56 & 57 Vict. c. 10, s. 3, *post*, p. 531.

(5.) The amount of pension in such cases shall be in the discretion of the police authority but within the maximum and minimum limits following:—

Scale A.

If the injury is accidental and the constable is partially disabled—

(a) if he has completed not more than five years approved service, an annual sum not greater than ten fiftieths and not less than ten sixtieths of his annual pay;

(b) if he has completed more than five and not more than ten years approved service, an annual sum not greater than twelve fiftieths and not less than twelve sixtieths of his annual pay;

(c) if he has completed more than ten and not more than fifteen years approved service, an annual sum not greater than fifteen fiftieths and not less than fifteen sixtieths of his annual pay; and

(d) if he has completed more than fifteen years approved service, an annual sum not greater than the maximum pension and not less than the minimum pension authorised under Article (1) of this schedule.

Scale B.

If the injury is accidental and the constable is totally disabled—

(a) if he has completed not more than ten years approved service, an annual sum not greater than fifteen fiftieths and not less than fifteen sixtieths of his annual pay;

(b) if he has completed more than ten and not more than fifteen years approved service, an annual sum not greater than twenty fiftieths and not less than twenty sixtieths of his annual pay;

(c) if he has completed more than fifteen years approved service, an annual sum not greater than the maximum pension authorised under Article (1) of this schedule, with an addition equal to five fiftieths of his annual pay, and not less than the minimum pension authorised under the same Article, with an addition equal to five sixtieths of his annual pay, provided that the pension shall not exceed two thirds of his annual pay.

Scale C.

If the injury is not accidental and the constable is partially disabled—

(a) if he has completed not more than ten years approved service, an annual sum not greater than twenty fiftieths and not less than twenty sixtieths of his annual pay;

(b) if he has completed more than ten and not more than fifteen years approved service, an annual sum not greater than twenty-five fiftieths and not less than twenty-five sixtieths of his annual pay;

(c) if he has completed more than fifteen years approved service, an annual sum not greater than the maximum pension authorised under Article (1) of this schedule, with an addition equal to ten fiftieths of his annual pay, and not less than the minimum pension authorised under the same Article, with an addition equal to ten sixtieths of his annual pay, provided that the pension shall not exceed two thirds of his annual pay.

Scale D.

If the injury is not accidental and the constable is totally disabled—

A sum not exceeding full pay and not less than the maximum amount prescribed by Scale C.

Pensions Allowances and Gratuities to Widow and Children.

(6.) Where a constable without his own default loses his life from the effect of an injury received in the execution of his duty, the pension to his widow and the allowances to his children shall be according to the following scale:—

(a) The pension to the widow shall be an annual sum of fifteen pounds;

(b) The allowance to each child shall be an annual sum of two pounds ten shillings:

Provided that the police authority may, in the case of a constable of a rank higher than that of sergeant, increase the above amounts, so however that the pension for a widow of an inspector do not exceed the annual sum of twenty-five

Schedule 1, Part II.

pounds, and the pension for a widow of an officer of a rank higher than that of inspector do not exceed thirty pounds, and the allowance for a child of a constable of a rank higher than that of sergeant do not exceed the annual sum of five pounds.

The following proviso has been added at the end of this paragraph by s. 5 of the Police Act, 1909 (9 Edw. 7, c. 40), *post*:

"Provided further that, where a constable loses his life from the effects of an injury which is not accidental, the police authority shall increase the pension to the widow to a sum equal to one-third of the annual pay of the constable, and the allowance to each child to a sum equal to one-fifteenth of such pay, or, if there is no widow, to a sum not less than one-fifteenth nor more than two-fifteenths of such pay, unless the aggregate of such pension and allowances would exceed two-thirds of such pay, in which case they shall be rateably reduced; the police authority may, however, refuse so to increase the pension to the widow on the ground of her misconduct, but any such refusal shall be subject to confirmation by the Secretary of State."

(7.) Where a constable dies under circumstances which do not entitle his widow and children to a pension or allowance under the preceding article of this schedule, any gratuities to the widow and children shall not exceed in the whole the amount of one month's pay for every completed year of approved service of the deceased constable.

(8.) The gratuities granted to the widow and children of a constable who dies within twelve months after the grant of a pension shall not exceed in the whole the difference between the annual pay of the constable and the amount he has actually received in respect of his pension.

PART III.

GENERAL RULES.

(9.) The pension to a widow shall continue only while she remains a widow and is of good character.

(10.) The allowance to a child shall not continue after the child attains the age of fifteen years.

(11.) In estimating any pension, gratuity, or allowance for the purposes of this Act—

(a) a pension or gratuity to a constable shall be calculated according to the amount of his annual pay at the date of his retirement;

(b) a pension or gratuity to the widow and an allowance or gratuity to a child of a constable shall be calculated according to the amount of the constable's annual pay at the date of his death;

(c) but [*where a constable has, in the course of the three years next before the date of his retirement or death, been in more than one rank,*] his annual pay at the date of the retirement or death shall be deemed to be the average annual amount of pay received by him for the said three years, instead of the annual amount actually received by him at that date.

The words in italics are now to be read as follows:—"Where a constable at the date of his retirement or death holds a rank to which he has been promoted within the three years previous." 56 & 57 Vict. c. 10, s. 6, *post*, p. 531. The effect of this amendment is that a constable who has been reduced in rank is only entitled to have his pension calculated according to the amount of his annual pay at the date of his retirement. *Ruff* v. *Home Secretary*, (1896) 60 J. P. 343.

Section 26.

SECOND SCHEDULE.

DECLARATION.

* Insert according to the circumstances.

I, *A.B.*, now residing in the parish of in the county of , solemnly and sincerely declare that I have* never served in any police force in Great Britain, nor in the Royal Irish Constabulary,

nor in the Royal Navy, nor in Her Majesty's army, nor in the militia, nor under the Post Office, nor under any public department Schedule 2.

[*or* that I have served in the police force for years, from to , and in Her Majesty's army for years from to , and am now in the Army Reserve, but have not served in the Royal Irish Constabulary nor in the Royal Navy, nor in the militia, nor under the Post Office, nor under any public department, *or as the case may be*].

Declared before me,

(Signed) *A.B.*

At the day of 18 .

THIRD SCHEDULE.

Section 33.

POLICE AREAS AND AUTHORITIES.

Police Area.	Police Authority.	Chief Officer of Police.	Police Fund.
The Metropolitan Police District.	One of Her Majesty's Principal Secretaries of State.	The commissioner of police of the metropolis.	The funds applicable for defraying the expenses of the metropolitan police force.
A county	The standing joint committee of the quarter sessions and the county council.	The chief constable.	The county fund.
A borough	The watch committee.	The chief or head constable.	The borough fund or borough rate or any fund or rate applicable under any local Act for the expenses of the police force.
A town not being a borough and maintaining a separate police force under any local Act of Parliament.	The authority having the management of the police under the local Act.	The head constable or other officer by whatever name called having the chief command of the police.	The fund or rate applicable under the local Act for the expenses of the police force.
The river Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners.	The Tyne Improvement Commissioners.	The superintendent or other officer having the chief command of the police.	The tonnage rates and dues and other sums applicable under the Acts relating to the improvement of the river Tyne for the expenses of maintaining the police force.

In this schedule the expression "county" means an administrative county within

Schedule 3. the meaning of the Local Government Act, 1888, but does not include a county borough.

Such parts of any county as are within the Metropolitan Police District, or as form part of any other police area, shall not be deemed for the purposes of this Act to form part of the county police area.

Section 36.

FOURTH SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
10 Geo. 4, c. 44 ..	An Act for improving the police in and near the metropolis.	In section ten, from "and the receiver for the time being," where those words first occur, to "paid to him under this Act."
2 & 3 Vict. c. 47 ..	The Metropolitan Police Act, 1839.	Sections twenty-two and twenty-three.
2 & 3 Vict. c. 71..	An Act for regulating the police courts in the metropolis.	In section forty-six, the words "which shall be applied towards defraying the charge of maintaining the police of the metropolis."
3 & 4 Vict. c. 88 ..	An Act to amend an Act for the establishment of county and district constables.	Sections ten, eleven, and seventeen.
19 & 20 Vict. c. 69	An Act to render more effectual the police in counties and boroughs in England and Wales.	Sections eight, ten, eleven, thirteen, twenty-seven, twenty-eight, and twenty-nine.
20 & 21 Vict. c. 64	The Metropolitan Police Act, 1857.	Section fifteen.
22 & 23 Vict. c. 32	An Act to amend the law concerning the police in counties and boroughs in England and Wales.	Sections eight, nine, ten, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-three, and twenty-eight, and in section twenty-four the words "not exceeding three pounds."
24 & 25 Vict. c. 124.	The Metropolitan Police Act, 1861.	Section six.
28 & 29 Vict. c. 35	The Police Superannuation Act, 1865.	Section two, except so far as it relates to the County and Borough Police Act, 1859; and sections three, four, five, and nine.
45 & 46 Vict. c. 50	The Municipal Corporations Act, 1882.	Fifth Schedule, Part II., 5. (*b.*) from "or as may be awarded" down to "length of service."

Schedule 5.

FIFTH SCHEDULE.

Section 38.

THE POLICE (ENGLAND) ACTS.

Session and Chapter.	Title.	Short Title.
2 & 3 Vict. c. 93 ..	An Act for the establishment of county and district constables by the authority of justices of the peace.	County Police Act, 1839.
3 & 4 Vict. c. 88 ..	An Act to amend the Act for the establishment of county and district constables.	County Police Act, 1840.
19 & 20 Vict. c. 69	An Act to render more effectual the police in counties and boroughs in England and Wales.	County and Borough Police Act, 1856.
20 Vict. c. 2 ..	An Act to facilitate the appointment of chief constables for adjoining counties, and to confirm appointments of chief constables in certain cases.	County Police Act, 1857.
22 & 23 Vict. c. 32	An Act to amend the law concerning the police in counties and boroughs in England and Wales.	County and Borough Police Act, 1859.
28 & 29 Vict. c. 35	An Act to amend the law relating to the police superannuation funds in counties and boroughs.	Police Superannuation Act, 1865.

Sections one hundred and ninety to one hundred and ninety-four (both inclusive) of the Municipal Corporations Act, 1882, shall for the purposes of this Act be deemed to form part of the Acts in this schedule. 45 & 46 Vict. c. 50.

THE COUNTY COUNCILS (ELECTIONS) ACT, 1891.

(54 & 55 VICT. c. 68.)

An Act to alter the Date of holding County Council Elections, and to remove Doubts respecting the Holding of such Elections. [5th August, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Change of date of elections.

1.—(1.) The ordinary day of election of county councillors in each county shall be such day between the first and eighth day of March as the county council may fix, and, if no date is so fixed, shall be the eighth day of March (*a*).

(2.) The ordinary day of retirement of county councillors shall be the eighth day of March in every third year, and on that day the county councillors then in office shall retire together, and their places shall be filled by the newly-elected councillors, who shall come into office on that day.

(3.) The sixteenth day of March or such other day within ten days after the ordinary day of retirement of county councillors as the council of any county may from time to time fix for that county, shall, in substitution for the ninth day of November, be the ordinary day of election of the chairman, and of the aldermen, and the day for holding a quarterly meeting, and if the county council fix any hour for the quarterly meeting, that hour shall be substituted for the hour specified in the Municipal Corporations Act, 1882 (*b*).

45 & 46 Vict. c. 50.

(4.) All periods which, in the enactments of the Municipal Corporations Act, 1882, are computed by reference to the first or ninth day of November shall, so far as those enactments apply to county councils, be computed by reference to such of the above-mentioned days then next following as the case requires (*c*).

(*a*) This date is substituted for the 1st of November, the date appointed by s. 52 of the Municipal Corporations Act, 1882, *ante*.

(*b*) This sub-section has been amended by the County Councils (Elections) Act Amendment Act, 1900 (63 & 64 Vict. c. 13), s. 2, *post*, p. 591, which provides that in any year which is not the year of election of county councillors, the ordinary day of election of the chairman and the day for holding the quarterly meeting referred to in this sub-section may be such day in the months of March, April, or May as the county council shall from time to time determine.

As to the hour for the quarterly meeting, see the Municipal Corporations Act, 1882, Schedule 2, r. 2, *ante*, p. 170.

(*c*) See for instance s. 54 of the Municipal Corporations Act, 1882, and Schedule 3, Part II. of that Act, *ante*.

Section 1.

The ordinary day of election of councillors shall be fixed by the county council not less than six weeks before the ordinary day of retirement of county councillors.

Nothing shall authorise or require a returning officer to hold an election of a county councillor to fill a casual vacancy which occurs within six months before the ordinary day of retirement of county councillors.

County registers.

2.—(1.) The county register shall be completed before the twentieth day of December in every year and come into operation on the next first day of January.

(2.) The burgess lists forming the burgess roll, which comes into operation on the first day of November in every year, shall on and after that day until the next first day of January form part of the county register in substitution for the former burgess lists.

See s. 45 of the Municipal Corporations Act, 1882, and the notes thereto, *ante*.

Removal of doubts and amendment as to election of county councillors in boroughs.

3. For the purpose of the election of county councillors for any electoral division which is co-extensive with, or wholly comprised in, a municipal borough, the following provisions shall have effect :—

(a) The mayor of the borough, or some person appointed by him, or, if the mayor is dead or absent or otherwise incapable of acting, an alderman appointed by the council of the borough, shall be the returning officer, and so far as respects such election shall follow the instructions of, and return the names of the persons elected to, the county returning officer :

51 & 52 Vict. c. 41.

(b) Nothing in section seventy-five of the Local Government Act, 1888, substituting the returning officer or his deputy for the town clerk, shall extend to any such election.

See the notes to s. 75 (2), (4), (5) of the Local Government Act, 1888, *ante*.

* * * * *

Amendment of 45 & 46 Vict. c. 50, ss. 34, 35, and 51 & 52 Vict. c. 41, s. 75.

5. The declaration required under sections thirty-four and thirty-five of the Municipal Corporations Act, 1882, to be made by a person elected to a corporate office in a county may be made at any time within three months after notice of the election, and such declaration may be made either in the manner prescribed by the Local Government Act, 1888, or before any justice of the peace or commissioner to administer oaths in the Supreme Court of Judicature.

This section extends the period of ten days within which the declaration was required to be made by s. 34 of the Municipal Corporations Act, 1882, as amended by s. 75 (14) of the Local Government Act, 1888, *ante*.

Returning officer not disqualified for membership of county council.

6. It is hereby declared that a person shall not be disqualified, nor be deemed ever to have been disqualified, under section twelve of the Municipal Corporations Act, 1882, for being a member of a county council by reason only of his being appointed returning officer by that council, except where he has directly or indirectly by himself or his partner received any profit or remuneration in respect of such appointment.

See the notes to s. 12 of the Municipal Corporations Act, 1882, *ante*.

Section 7.

Repeal.

7. The Act specified in the Schedule to this Act is hereby repealed to the extent in the third column of that schedule mentioned.

Short title and construction.

8. This Act may be cited as the County Councils (Elections) Act, 1891, and shall be construed as one with the Local Government Act, 1888.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	Section seventy-five, from "In "a year in which" to "be "conducted together," being sub-section one; from "In "a borough the returning "officer" down to "construed to refer to the town clerk," being sub-section six; and from "The period between" down to "returning officer may fix," being sub-section nine; and from "The seventh of November" to "quarterly "meeting of the county "council," being sub-section thirteen; and from "shall authorise or require" to "such electoral division or," being paragraph (*d*) of sub-section sixteen.

THE MORTMAIN AND CHARITABLE USES ACT AMENDMENT ACT, 1892.

(55 & 56 Vict. c. 11.)

An Act to amend the Mortmain and Charitable Uses Act, 1888.

[20th June, 1892.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Extension of 51 & 52 Vict. c. 42, s. 6.

1. Section six of the Mortmain and Charitable Uses Act, 1888, except so much of sub-section (2) thereof as provides that an assurance by deed, made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, shall apply to any assurance by deed of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land.

See 51 & 52 Vict. c. 42, s. 6, *ante*, p. 465. The effect of this Act is to extend the exemption provided by s. 6 of the earlier Act to assurances by deed to a municipal corporation for any purpose for which they are empowered by statute to acquire land. Such assurances need not be executed not less than twelve months before the death of the assuror, even if they are made without consideration. Assurances by will, however, are not affected by this Act.

Definitions.

2. For the purpose of this Act " local authority " means any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes or by the issue of any precept, certificate, or other document to require payment from some authority or officer of money which may render necessary the making of any such rate ; and " assurance " has the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Extent of Act.

3. This Act shall not apply to Scotland or Ireland.

Short title.

4. This Act may be cited as the Mortmain and Charitable Uses Act Amendment Act, 1892.

THE WEIGHTS AND MEASURES (PURCHASE) ACT, 1892.

(55 & 56 VICT. c. 18.)

An Act for authorising County and Borough Councils to purchase Franchises of Weights and Measures. [20th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power for county or borough council to purchase franchise of weights and measures.

1.—(1.) Where the council of a county or borough are the local authority for the execution of the law relating to weights and measures, the council and the owner of any franchise of weights and measures may, with the approval of the Board of Trade, enter into and carry into effect any agreement for the sale to and purchase by the council of all or any of the powers and authorities of the franchise owner within the area under the council as such local authority, and on any such purchase being completed the powers and authorities purchased shall cease to be exercised.

(2.) For the purpose of any such purchase the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and the franchise shall be deemed land within the meaning of those Acts.

51 & 52 Vict. c. 41.

38 & 39 Vict. c. 55.

(3.) A county council may borrow money for the purposes of this Act in accordance with the Local Government Act, 1888, and a borough council may borrow money for the purposes of this Act in accordance with the Public Health Act, 1875.

(4.) The expenses incurred by a borough council under this Act shall be defrayed out of the borough fund or borough rate, and any money borrowed by such a council shall be borrowed on the security of the borough fund or borough rate.

(5.) For the purposes of this Act the expression "franchise of weights and measures" shall include the authority which any court-leet for any hundred or manor, or any jury or ward inquest, or the lord or lady of any manor, or any other person, may have for inspecting, examining, regulating, verifying, stamping, adjusting, seizing, breaking, or destroying any weights or measures, or weighing instrument or measuring instrument.

As to the cases in which the council of a borough are the local authority for the execution of the law relating to weights and measures, see s. 50 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), and the note thereto, *ante*, p. 349.

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Provision as to certain boroughs.

2. Where the council of a county have in pursuance of this Act acquired any franchise of weights and measures in respect of any area within a borough the council of which are not at the time of such acquisition the local authority for the execution of the law relating to weights and measures, the council of that borough shall not become such a local authority until they have recouped to the council of the county such proportion of the expenses of the county council in acquiring the franchise and in executing the law relating to weights and measures as may be agreed on between the respective councils, or may, in case of difference, be determined by the Board of Trade.

As to the conditions under which a borough council can become the local authority, see s. 50 of the Weights and Measures Act, 1878, *ante*, p. 349.

Extent of Act.

3. This Act shall not extend to Scotland or Ireland.

Short title and construction. 41 & 42 Vict. c. 49. 52 & 53 Vict. c. 21.

4. This Act may be cited as the Weights and Measures (Purchase) Act, 1892, and shall be read as one with the Weights and Measures Acts, 1878 and 1889.

THE TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892.

(55 & 56 VICT. c. 29.)

An Act to facilitate the Acquisition and Holding of Land by Institutions for promoting Technical and Industrial Instruction and Training.

[27th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Technical and Industrial Institutions Act, 1892.

Definition of institution.

2. This Act applies to every institution established, whether before or after the passing of this Act, for effecting all or any of the following purposes, that is to say :—

52 & 53 Vict. c. 76.

(i.) To give technical instruction within the meaning of the Technical Instruction Act, 1889 ;

(ii.) To provide the training, mental or physical, necessary for the above purpose ;

(iii.) In connexion with the purposes before mentioned, to provide workshops, tools, scientific apparatus and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions, and meetings, gymnasiums, and swimming baths, and also general facilities for mental and physical training, recreation, and amusement, and also all necessary and proper accommodation for persons frequenting the institution ;

and every such institution is in this Act referred to as the institution.

Governing body.

3.—(1.) The governing body of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees, or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution.

(2.) The governing body may make byelaws and rules for the management and conduct of the institution.

Incorporation of 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106.

4. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860 (except the provisions of those Acts relating to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by promoters of the undertaking, and with respect to determining the amount of

purchase money by valuation of surveyors), are hereby incorporated in this Act. Section 4.

5. The governing body of the institution may by agreement enter on, take, and use any land required by them for the purposes of the institution, and such land may be conveyed either to the governing body or to trustees for the governing body. Power to take land by agreement.

6.—(1.) A conveyance of land may be made to the governing body of the institution or to trustees for the governing body either for valuable consideration in money or in consideration of a rentcharge, or by way of exchange for other land, or, subject as in this Act provided, by way of free gift, and without any consideration. Conveyance may be by way of sale, exchange, or gift.

(2.) A conveyance under this Act by a person having an equitable estate shall operate to pass any bare outstanding legal estate vested in a trustee.

7.—(1.) A conveyance under this Act by a person not entitled to dispose absolutely for his own benefit of the land proposed to be conveyed (other than a conveyance on a sale or exchange for the best consideration in money, or by way of rentcharge, or in land to be reasonably obtained) shall be subject to the following restrictions and provisions:— Conveyances by limited owners.

(a) It shall not in itself, or in addition to any land conveyed under this Act by the same person, comprise more than two acres in the whole in any one county, city, or borough:

(b) It shall be made either with the consent of the person, if any, entitled to the next estate of freehold in remainder for the time being, or with the approval of the High Court of Justice.

(2.) Every application to the Court for an order approving a conveyance under this Act shall be by summons in chambers, and shall, subject to the Acts regulating the Court, be assigned to the Chancery Division.

(3.) On any such application the Court may direct notice to be served on such persons, if any, as it thinks fit.

(4.) On any such application the Court shall have regard to the circumstances of the settled estate, the wants of the neighbourhood, and the interests of the persons entitled in remainder, and the Court, if it thinks fit under all the circumstances of the case, may make an order approving the proposed conveyance. Such order, if the Court thinks fit, may be made on such terms and conditions, if any, as the Court thinks proper; but no such order shall be made if the application is opposed by any person entitled in remainder, unless the Court is of opinion that the opposition is unreasonable, or the interest of the person opposing so remote that it may properly be disregarded.

8. Every institution for which land has been acquired under an exercise of the powers conferred by this Act shall be open generally either to all persons or to all persons within specified limits as to age, qualification, or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees Institution to be public.

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or otherwise, but so that no preference be given to any person or class of persons within the specified limits.

Site may be sold or exchanged.

9.—(1.) Land acquired under the powers of this Act shall not be used otherwise than for the purposes of an institution within the meaning of this Act, but, with the consent of the Charity Commissioners, may be sold or may be exchanged for other land.

(2.) The governing body or their trustees may execute conveyances and do all acts necessary to effectuate a sale or exchange.

(3.) On a sale, the receipt of the governing body or of the trustees for the governing body shall be a sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of other land.

(4.) Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.

(5.) Money arising by sale may, until reinvested in the purchase of land, be invested in the names of the governing body or of trustees for the governing body in any manner in which trust money is for the time being by law authorised to be invested; and all dividends and income on investments so made and all the resulting income shall be invested in like manner so as to accumulate in the way of compound interest, and be added to capital until the capital is reinvested in the purchase of land.

Parts I. and II. of 51 & 52 Vict. c. 42, and part of 54 & 55 Vict. c. 73, not to apply.

10.—(1.) Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to conveyances or to assurances by will made under or for the purposes of this Act, but every such conveyance or assurance shall be enrolled as soon as may be in the books of the Charity Commissioners.

(2.) Any corporate body may acquire and shall be entitled to hold and retain land for the purposes of this Act without any licence in mortmain.

The Mortmain and Charitable Uses Act, 1888, is set out *ante*, p. 462.

Extent of Act.

11. This Act shall not extend to Scotland.

THE POLICE RETURNS ACT, 1892.

(55 & 56 VICT. C. 38.)

An Act to alter the period for which certain Police Returns are required to be made. [27th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of provision as to annual police returns. 19 & 20 Vict. c. 69.

1. The annual statement required by section fourteen of the County and Borough Police Act, 1856, shall be made for each calendar year, and shall be transmitted to one of Her Majesty's principal Secretaries of State as soon as may be after the termination of that year.

See 19 & 20 Vict. c. 69, s. 14, *ante*, p. 242.

Commencement.

2. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-three.

Short title.

3. This Act may be cited as the Police Returns Act, 1892.

THE PUBLIC LIBRARIES ACT, 1892.

(55 & 56 VICT. c. 53.)

An Act to consolidate and amend the Law relating to Public Libraries.
[27th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

This Act has been amended by 56 & 57 Vict. c. 11, *post*, p. 533 ; 61 & 62 Vict. c. 53, *post*, p. 590 ; and 1 Edw. 7, c. 19, *post*, p. 592. The provisions which relate only to rural parishes or London have been omitted.

Adoption of Act and Constitution of Library Authority.

Extent and application of Act.

1.—(1.) This Act shall extend to every library district for which it is adopted.

(2.) For the purposes of this Act and subject to the provisions thereof every urban district and every parish in England and Wales which is not within an urban district shall be a library district.

(3.) [*This Act shall have effect as regards any parish which is partly within and partly without an urban district as if the part which is without the district were a separate parish, and the overseers for the parish shall be deemed for the purposes of this Act to be the overseers for that part.*]

The power of adopting the Act in an urban district is now vested in the urban authority by 56 & 57 Vict. c. 11, s. 2, *post*, p. 533.

Sub-section (3) of this section has been repealed by s. 89 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 573.

Limitations on expenditure for purposes of Act.

2.—(1.) A rate or addition to a rate shall not be levied for the purposes of this Act for any one financial year in any library district to an amount exceeding one penny in the pound.

(2.) This Act may be adopted for any library district subject to a condition that the maximum rate or addition to a rate to be levied for the purposes of this Act in the district or in any defined portion of the district in any one financial year shall not exceed one halfpenny or shall not exceed three farthings in the pound, but such limitation if fixed at one halfpenny may be subsequently raised to three farthings, or altogether removed, or where it is for the time being fixed at three farthings may be removed.

The expression " financial year " is defined in s. 27, *post*.

Sub-section (2) has been modified as regards urban districts by 56 & 57 Vict. c. 11, s. 2, *post*, p. 533.

* * * * *

Section 4.

4. This Act when adopted for any library district shall be carried into execution, if the library district is an urban district, by the urban authority, and, if it is a parish, by the commissioners appointed under this Act; and any such authority or commissioners executing this Act are herein-after referred to as a "library authority."

Act when adopted to be executed by library authority.

* * * * *

Execution of Act.

Provision of libraries, museums, and schools of science and art.

11.—(1.) The library authority of any library district for which this Act has been adopted may, subject to the provisions of this Act, provide all or any of the following institutions, namely, public libraries, public museums, schools for science, art galleries, and schools for art, and for that purpose may purchase and hire land, and erect, take down, rebuild, alter, repair, and extend buildings, and fit up, furnish, and supply the same with all requisite furniture, fittings, and conveniences.

(2.) Where any of the institutions mentioned in this section has been established either before or after the passing of this Act by any library authority under this Act or the Acts hereby repealed, that authority may establish in connexion therewith any other of the said institutions without further proceedings being taken with respect to the adoption of this Act.

(3.) No charge shall be made for admission to a library or museum provided under this Act for any library district, or, in the case of a lending library, for the use thereof by the inhabitants of the district; but the library authority, if they think fit, may grant the use of a lending library to persons not being inhabitants of the district, either gratuitously or for payment.

Provision as to acquisition and disposal of land.

12.—(1.) For the purpose of the purchase of land under this Act by a library authority the Lands Clauses Acts, with the exception of the provisions relating to the purchase of land otherwise than by agreement, shall be incorporated with this Act.

(2.) The library authority of any library district which is an urban district may with the sanction of the Local Government Board appropriate for the purposes of this Act any land which is vested in that authority.

(3.) A library authority may with the sanction of the Local Government Board sell any land vested in them for the purposes of this Act, or exchange any such land for other land better adapted for those purposes, and the money arising from the sale or received by way of equality of exchange, shall be applied in or towards the purchase of other land better adapted for the said purposes, or may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board.

(4.) A library authority may let a house or building, or any part thereof, or any land vested in them for the purposes of the Act, which is not at the time of such letting required for those purposes, and shall apply the rents and profits thereof for the purposes of this Act.

Power to grant charity

13.—(1.) Any person holding land for ecclesiastical, parochial, or charitable purposes may, subject as herein-after provided, grant or

Section 13. land for purposes of this Act.

convey, by way of gift, sale, or exchange, for any of the purposes of this Act any quantity of such land, not exceeding in any one case one acre, in any manner vested in such person.

(2.) Provided that—

(a) ecclesiastical property shall not be granted or conveyed for those purposes without the consent of the Ecclesiastical Commissioners; and

(b) parochial property shall not be so granted or conveyed save by the board of guardians of the poor law union comprising the parish to which the property belongs, or without the consent of the Local Government Board; and

(c) other charitable property shall not be so granted or conveyed without the consent of the Charity Commissioners; and

(d) the land taken in exchange or the money received for such sale shall be held on the same trusts as the land exchanged or sold; and

(e) land situated in the administrative county of London, or in any urban district containing according to the last published census for the time being over twenty thousand inhabitants, which is held on trusts to be preserved as an open space, or on trusts which prohibit building thereon, shall not be granted or conveyed for the purposes of this Act.

(3.) Any land granted or conveyed to any library authority under this section may be held by that authority without any licence in mortmain.

Vesting of property in library authority.

14. All land appropriated, purchased, or rented, and all other real and personal property presented to or purchased or acquired for any library, museum, art gallery, or school under this Act shall be vested in the library authority.

Management of libraries, &c., by library authority or committee.

15.—(1.) The general management, regulation, and control of every library, museum, art gallery, and school provided under this Act shall be vested in and exercised by the library authority, and that authority may provide therein books, newspapers, maps, and specimens of art and science, and cause the same to be bound and repaired when necessary.

(2.) The library authority may also appoint salaried officers and servants, and dismiss them, and make regulations for the safety and use of every library, museum, gallery, and school under their control, and for the admission of the public thereto.

(3.) Provided that a library authority being an urban authority may if they think fit appoint a committee and delegate to it all or any of their powers and duties under this section, and the said committee shall to the extent of such delegation be deemed to be the library authority. Persons appointed to be members of the committee need not be members of the urban authority.

As to the punishment of disorderly behaviour in a library provided under this Act, see 61 & 62 Vict. c. 53, s. 2, *post*, p. 590; and as to the power of a library authority to make byelaws enforceable by penalties, see 1 Edw. 7, c. 19, s. 3, *post*, p. 592.

Power to library authorities to make

16.—[(1.) *The commissioners separately appointed for any two or more parishes for which this Act has been adopted may with the consent of the*

voters in each of those parishes agree to share in such proportions and for such period as may be determined by the agreement the cost of the purchase, erection, repair, and maintenance of any library building situate in one of those parishes, and also the cost of the purchase of books and newspapers for such library, and all other expenses connected with the same.]

Section 16. agreements for use of library.

(2.) The library authority of any library district may with the consent of the voters in the district and of the Charity Commissioners make the like agreement with the governing body of any library established or maintained out of funds subject to the jurisdiction of the Charity Commissioners, and situate in or near the library district, and, in case of inability, objection, or failure on the part of the governing body to enter into such agreement, the Charity Commissioners may, if they think fit, become party to the agreement on behalf of the governing body.

(3.) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery, or school for art in like manner as to a library.

Sub-section (1) has been repealed by 1 Edw. 7, c. 19, s. 14, *post*, p. 594. As to the power of two or more library authorities to make agreements for the use of a library or the purchase of books, see now s. 5 of that Act, *post*, p. 593.

In an urban district the consent of the urban authority is now required under sub-s. (2) of this section, instead of that of the voters. 56 & 57 Vict. c. 11, s. 2, *post*, p. 533.

Power to library authority to accept parliamentary grant.

17. Where a library authority accepts a grant out of money provided by Parliament from the Department of Science and Art towards the purchase of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of a teacher in any such school, or towards the furnishing of any such school, that authority may accept the grant upon the conditions prescribed by the Department of Science and Art, and may execute any instruments required by that Department for carrying into effect those conditions, and upon payment of the grant shall be bound by such conditions and instruments, and have power and be bound to fulfil and observe the same.

Financial Provisions.

Expenses of library authority, how defrayed.

18.—(1.) The expenses incurred in a library district in and incidental to the execution of this Act, including all expenses in connexion with ascertaining the opinion of the voters in the district, may be defrayed,—

(a) where the library district is a municipal borough, out of the borough fund or borough rate, or a separate rate to be made, assessed, and levied in like manner as the borough rate; and

(b) where the library district is an urban district other than a borough, out of the rate applicable to the general expenses incurred in the execution of the Public Health Acts, or a separate rate to be made, assessed, and levied in like manner as the rate so applicable; and

* * * * *

Borrowing by library authority.

19.—(1.) Every library authority, with the sanction of the Local Government Board, and in the case of a library authority being commissioners appointed for a parish, with the sanction also of the vestry

Section 19.

of such parish, may borrow money for the purposes of this Act on the security of any fund or rate applicable for those purposes.

(2.) Sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875, relating to borrowing by a local authority shall apply, with the necessary modifications, to all money borrowed by any library authority for the purposes of this Act, as if the library authority were an urban authority, and as if references to this Act were substituted in those sections and in the forms therein mentioned for references to the Public Health Act, 1875.

38 & 39 Vict. c. 55.

(3.) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875, lend any money which may be borrowed by a library authority for the purposes of this Act.

The Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), is set out *ante*, p. 300.

Accounts and audit.

20.—(1.) Separate accounts shall be kept of the receipts and expenditure under this Act of every library authority and their officers, and those accounts shall be audited in like manner and with the like incidents and consequences, in the case of a library authority being an urban authority, and of their officers, as the accounts of the receipts and expenditure of that authority and their officers under the Public Health Acts.

(2.) The accounts of the receipts and expenditure of a library authority being commissioners appointed under this Act, and of their officers, shall be audited yearly by a district auditor in like manner and with the like incidents and consequences as in the case of an audit under the Acts relating to the relief of the poor, and those commissioners shall be a local authority within the meaning of the District Auditors Act, 1879.

42 & 43 Vict. c. 6.

(3.) The accounts of the receipts and expenditure under this Act of any library authority other than the council of a municipal borough shall be open at all reasonable times to the inspection, free of charge, of any ratepayer in the library district, and any such ratepayer may without charge make copies of and extracts from those accounts; and if any library authority or any person being a member thereof or employed by them and having the custody of the accounts fails to allow the accounts to be inspected, or copies or extracts to be made, as required by this section, such authority or person shall for each offence be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding five pounds.

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Supplemental Provisions.

Adjustment of interests on termination of agreement.

24. Any agreement under this Act between two or more vestries or library authorities, or between a library authority and any other body, may provide that on the termination of the agreement an adjustment shall be made of the interests of the several parties thereto in any property to the provision of which they have contributed, and as to the mode in which the adjustment shall be arrived at, and in the event of any dispute the adjustment shall on the application of any of the

parties be made by an arbitrator appointed by the Local Government Board. Section 24.

25. Nothing in this Act shall interfere with the operation of the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in Oxford. Saving for Oxford.

* * * * *

27. In this Act, unless the context otherwise requires,— Definitions.

the expression "urban district" means a municipal borough, Improvement Act district, or local government district; and "urban authority" means, as regards each such district, the council, improvement commissioners, or local board:

the expression "financial year" means the period of twelve months for which the accounts of a library authority are made up:

[*the expression "voter" means a person who is registered as a county elector or enrolled as a burgess in respect of the occupation of property situate in the district or parish in connexion with which the voter is mentioned:*]

The expression "overseers" includes any persons authorised and required to make and levy poor rates in a parish, and acting instead of overseers:

The expression "common council" means in relation to the city of London the mayor, commonalty, and citizens, acting by the mayor, aldermen, and commons in common council assembled.

The definition of "voter" has been repealed by 1 Edw. 7, c. 19, s. 14, and is now replaced by that contained in s. 9 of that Act, *post*, p. 593.

28. * * * * *

This section repeals former Acts relating to public libraries.

29. Nothing in this Act shall be deemed to limit, or to reduce or alter the limit of any rate which any library authority is authorised to levy under or by virtue of any local Act. Saving as to local Acts.

30. This Act shall come into operation on the first day of October next after the passing thereof. Commencement.

31. This Act may be cited as the Public Libraries Act, 1892. Short title.

THE POLICE DISABILITIES REMOVAL ACT, 1893.

(56 & 57 VICT. c. 6.)

An Act to remove Disabilities of Policemen with regard to their Vote in Municipal, School Board, and other Elections. [12th May, 1893.]

WHEREAS it is expedient that the Police Disabilities Removal Act, 1887, whereby the disabilities of persons employed in or in connexion with the police to vote at parliamentary elections were removed, should be extended to municipal and other similar elections:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal.

1. The enactments mentioned in the schedule to this Act, which disqualify the police for voting at municipal and other elections, are hereby repealed to the extent mentioned in the third column of the said schedule.

See 19 & 20 Vict. c. 69, s. 9, *ante*, p. 242; and 22 & 23 Vict. c. 32, s. 3, *ante*, p. 245.

Facilities for polling under 50 & 51 Vict. c. 9, s. 2, to apply to all elections.

2. The provisions of section two of the Police Disabilities Removal Act, 1887, shall apply to all municipal and other elections as well as parliamentary elections, subject to the modification that the words "register of voters" shall mean the register of voters in force for such municipal or other elections.

Section 2 of the Police Disabilities Removal Act, 1887 (50 & 51 Vict. c. 9), provides as follows:—

"2. Where a constable is or is likely to be, on the day of any election, sent or employed in the discharge of his duty so as to prevent him voting at the polling booth or station at which he would otherwise be entitled by law to vote, the following enactments shall have effect:—

"(1) Such constable may, at any time within seven days before the election, apply to the chief constable for a certificate, and the chief constable shall thereupon give a certificate under his hand stating the name of the constable, his number in the police force, his number and description on the register of voters, and the fact that he is so sent or employed;

"(2) The presiding officer at any polling booth or station shall, on production by such constable of the said certificate, allow him to vote at that booth or station, and shall forthwith cancel the said certificate and deal with the same in like manner as the counterfoils of voting papers are directed by law to be dealt with;

"(3) No such constable shall under this section be entitled to vote at any election at which he would not but for this section be entitled to vote, nor more than once in any election, and if he so votes or attempts to vote, he shall be subject to all the penalties imposed by law on a person personating or attempting to personate a voter at such election;

Section 2.

"(4) In this section—

"(a) 'Constable' includes any person belonging to a police force;

"(b) 'Chief constable' includes an assistant chief constable, a commissioner or assistant commissioner of police, a head constable, and any other person for the time being in command of a police force or acting in that capacity;

"(c) 'Register of voters' has the same meaning as in the Ballot Act, 1872."

Construction and short title.

3. This Act and the Police Disabilities Removal Act, 1887, shall be construed as one Act.

This Act may be cited as the Police Disabilities Removal Act, 1893.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
19 & 20 Vict. c. 69.	The County and Borough Police Act, 1856.	Section nine, the words "be capable of giving his vote for the election of any person to any municipal office in such borough;" and also the words "nor shall any such constable."
22 & 23 Vict. c. 32.	The County and Borough Police Act, 1859.	Section three, the words "be capable of giving his vote for the election of any person to any municipal office in any borough within such county or in any other borough in which such constable has authority, nor shall any such constable."

THE POLICE ACT, 1893.

(56 & 57 VICT. c. 10.)

An Act to amend the Police Acts. [9th June, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Constables employed on fire duty to be deemed to be engaged on police duty.

1. Where a constable belonging to any police force, in pursuance of any general or special direction of the police authority, acts as a fireman or assists in the extinguishment of fire, or in protecting life or property from fire, such constable shall be deemed for the purposes of the Police Act, 1890, to be in the execution of his duty.

The Police Act, 1890 (53 & 54 Vict. c. 45), is set out, *ante*, p. 486. See ss. 1 and 2 of that Act.

Borough police may be employed as fire brigade. 10 & 11 Vict. c. 89.

2.—(1.) The council of a borough may by resolution delegate to the watch committee its powers under sections thirty-two and thirty-three of the Town Police Clauses Act, 1847, or under any similar enactments in any local Act; and, where such resolution has been passed, the watch committee may employ constables wholly or partially as firemen:

Provided that no constable, who at the passing of this Act is not employed to act as fireman, shall be so employed without his consent.

(2.) The pay of constables exclusively so employed, and the allowances of constables partially so employed, shall be defrayed from the fund or rate which is applicable to the purposes of the fire brigade or fire police.

(3.) The pensions and gratuities granted to such constables, and the allowances and gratuities granted to their widows and children shall be paid out of the police pension fund; but the council shall pay from the fund or rate applicable to the purposes of the fire brigade or fire police to the police pension fund such contribution as the Secretary of State may, by general or special order, determine to be a fair contribution in respect of such pensions, gratuities, and allowances.

Sections 32 and 33 of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), empower the council of a borough to purchase or provide fire engines and appliances for use in case of fire either within their borough or in the neighbourhood, and to employ firemen and to give them such salaries and such rewards for their exertions in case of fire as they think fit.

As to the right of the members of a fire brigade employed under that Act to exclude unauthorised persons from premises where the brigade is engaged in extinguishing a fire, see *Carter* v. *Thomas*, [1893] 1 Q. B. 673; 62 L. J. M. C. 104; 69 L. T. 436; 41 W. R. 510; 57 J. P. 428; 9 T. L. R. 386.

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As to the police pension fund, see 53 & 54 Vict. c. 45, s. 16, *ante*, p. 495.

A general order made by the Home Secretary under this section, and dated December 19th, 1893, provides as follows:—

"Where in any borough constables are under the said section employed exclusively as firemen, a sum equal to 12½ per cent. of the pay of such constables, and where in any borough constables are under the said section employed partially as firemen and receive for such duty any fixed allowances in the nature of extra pay, a sum equal to 20 per cent. of such allowances shall be annually paid to the police pension fund from the fund or rate applicable to the purposes of the fire brigade or fire police as a contribution in respect of the pensions, gratuities, and allowances authorised by the Police Acts, 1890 and 1893."

Power to increase pension.

3.—(1.) Where a pension is in pursuance of the Police Act, 1890, granted to a constable on the scale applicable to partial disability for earning a livelihood, the police authority may, within three years from the grant of the pension, if satisfied by the evidence of some legally qualified medical practitioner or practitioners selected by the police authority that the disability attributable to the injury received in the execution of duty has become total, increase the pension to the amount allowed by the provisions of the scale applicable to total disability.

(2.) This section shall apply in the case of all pensions granted since the commencement of the Police Act, 1890.

See Part II. of the First Schedule to the Police Act, 1890, *ante*, p. 506.

Amendment of 53 & 54 Vict. c. 45, s. 13 (2).

4. The provisions of sub-section two of section thirteen of the Police Act, 1890, shall apply to any constable in receipt of a pension who is appointed to any office remunerated out of any parochial, district, or other rate.

Extension of powers of investment of pension fund.

5. A police authority, in addition to the powers of investment conferred by section eighteen of the Police Act, 1890, may invest the capital of the pension fund in debentures or mortgages issued or made by a county council in pursuance of the powers conferred by section sixty-nine sub-section eight of the Local Government Act, 1888.

Amendment of Sch. I. 53 & 54 Vict. c. 45.

6. In Schedule I. (11) (*c*) of the Police Act, 1890, for the words ("where a constable has, in the course of the three years next before the date of his retirement or death, been in more than one rank") shall be substituted the words ("where a constable at the date of his retirement or death holds a rank to which he has been promoted within the three years previous").

Construction of Act and saving.

7. This Act shall be read as one with the Police Act, 1890, and nothing in this Act shall interfere with or diminish the powers of the Secretary of State, under section seventeen of that Act.

Partial repeal of 10 & 11 Vict. c. 89, and amendment of Local Acts.

8.—(1.) The words "any mischief by fire and" in section fourteen of the Town Police Clauses Act, 1847, are hereby repealed, and this Act shall have effect notwithstanding anything in any other Act, local or general, to the contrary.

(2.) Where any local Act or order contains provisions as to a fire brigade or fire police, the Secretary of State may frame and submit to Parliament a provisional order repealing or modifying such provisions

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so as to bring them into harmony with the provisions of this Act, and he may by such order unite any existing fire brigade pension fund with the police pension fund, and may make any other adjustments which may appear to him to be necessary in order to give effect to this Act.

Section 14 of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), requires the police appointed under that Act to use their best endeavours to prevent any mischief by fire and all felonies, misdemeanors, and breaches of the peace.

Short title.

9. This Act may be cited as the Police Act, 1893; and the Police Acts, 1839 to 1890, and this Act may be cited together as the Police Acts, 1839 to 1893.

THE PUBLIC LIBRARIES (AMENDMENT) ACT, 1893.

(56 & 57 Vict. c. 11.)

An Act to amend the Public Libraries Act, 1892. [9th June, 1893.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

See 55 & 56 Vict. c. 53, *ante*, p. 522 ; 61 & 62 Vict. c. 53, *post*, p. 590 ; and 1 Edw. 7, c. 19, *post*, p. 592.

Short title. 55 & 56 Vict. c. 53.

1. This Act may be cited as the Public Libraries (Amendment) Act, 1893, and shall be construed as one with the Public Libraries Act, 1892 (in this Act referred to as the principal Act), and these two Acts may be together cited as the Public Libraries Acts, 1892 and 1893.

Modification as to adoption, &c., in urban districts.

2.—(1.) Where a library district is an urban district—

(i.) The principal Act may, subject to the conditions contained in the second section of that Act, be adopted, and the limitation of the maximum rate to be levied for the purposes of that Act may within the limits fixed by that Act be fixed, raised, or removed, by a resolution of the urban authority under this Act :

(ii.) The consent of the urban authority given by a resolution of that authority under this Act shall be substituted in an urban district for the consent of the voters in any case when the consent of the voters is required under the principal Act.

(2.) Section three of the principal Act is hereby repealed, so far as it relates to an urban district.

Provisions as to a resolution of an urban authority for the adoption, &c., of the principal Act.

3.—(1.) A resolution under this Act shall be passed at a meeting of the urban authority, and one month at least before the meeting special notice of the meeting and of the intention to propose the resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a) given in the mode in which notices to attend meetings of the authority are usually given ; or

(b) where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last-known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last-known place of abode in England.

(2.) The resolution shall be published by advertisement in some one

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or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix.

(3.) A copy of the resolution shall be sent to the Local Government Board.

(4.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement.

Power to two or more library authorities to combine.

4.—(1.) Where the principal Act is adopted for two or more neighbouring urban districts, the library authorities of those districts may by agreement combine for any period for carrying the Act into execution; and the expenses of carrying the Act into execution shall be defrayed by such authorities in such proportions as may be agreed on by them.

(2.) For the purposes of the Act a joint committee may be formed, the members whereof shall be appointed by the several combining authorities in such proportions as may be agreed on, but need not be members of any of the combining authorities. Any such committee shall have such of the powers of a library authority under the principal Act, except the power of borrowing money, as the combining authorities may agree to confer upon them.

(3.) Where any of the combining authorities are improvement commissioners or a local board, the provisions of the principal Act with respect to accounts and audit shall apply to such committee as if they were a local board who were a library authority under the Act.

THE WEIGHTS AND MEASURES ACT, 1893.

(56 & 57 Vict. c. 19.)

An Act to amend the Law relating to Weights and Measures.

[29th June, 1893.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Relief of certain boroughs from contribution to county expenses. 41 & 42 Vict. c. 49. 52 & 53 Vict. c. 21. 55 & 56 Vict. c. 18.

1. Where the mayor, aldermen, and burgesses of a borough, not being a county borough, and not having a separate court of quarter sessions, were, on the first day of January one thousand eight hundred and ninety-three, the legally constituted local authority for the purposes of the Weights and Measures Acts, 1878 to 1892, or for the execution of the law relating to weights and measures under any local Act, they shall be paid by the county council of the county in which the borough is situate, once in every year, the proportionate amount contributed towards the expenses incurred by the county council in the execution of those Acts by the several parishes and parts of parishes within the borough, such proportion being calculated according to the values stated in the basis for county rates in force for the time being. Provided that when the amount received by a county council from the execution of those Acts is in excess of the expenditure thereupon, a proportionate part of such excess amount shall be deducted from any sum due to such borough as a recoupment under the Contagious Diseases (Animals) Acts, or the Sale of Food and Drugs Acts respectively.

As to the cases in which the council of a borough are the local authority for the purposes of the Weights and Measures Acts, see 41 & 42 Vict. c. 49, s. 50, and the note thereto, *ante*, p. 349.

The sums referred to in the latter part of this section are those which are payable by the county council under s. 41 of the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), and s. 9 of the Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30). The first of these sections provides as follows :

"**41.**—(1.) In England and Wales the council of a borough assessed to the county rate of a county shall be paid by the council of the county the proportionate amount paid by the several parishes and parts of parishes in the borough towards the expenses under this Act of the council of the county.

"(2.) Nothing in this Act shall affect the exemption of any borough which had a separate court of quarter sessions at the date of the passing of the Local Government Act, 1888, from contributing towards the expenses under this Act of the council of the county within which the borough is situate."

Section 9 of the Sale of Food and Drugs Act Amendment Act, 1879, is as follows :

"**9.** The town council of any borough having under any general or local Act of Parliament or otherwise a separate police establishment, and being liable to be

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assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force."

Short title and construction.

2. This Act may be cited as the Weights and Measures Act, 1893, and shall be read as one with the Weights and Measures Acts, 1878 to 1892.

Commencement.

3. This Act shall come into operation on the first day of April one thousand eight hundred and ninety-four.

THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

(56 & 57 Vict. c. 61.)

An Act to generalize and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties. [5th December, 1893.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

This Act appears to supersede the provisions of s. 226, sub-ss. (1) and (2) of the Municipal Corporations Act, 1882, *ante*, p. 152, for the protection of persons acting under that Act. Section 1 of this Act is almost identical with s. 226 (1) and (2) of the Act of 1882, except that the provisions as to costs in clauses (b) and (d) are new. Notice of action and the plea of the general issue are abolished by s. 2, but these were not required or authorised by s. 226 of the Act of 1882.

Protection of persons acting in execution of statutory or other public duty.

1. Where after the commencement of this Act any action, prosecution, or other proceeding (*a*) is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority (*b*), or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect :

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof (*c*) :

(b) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client (*d*) :

(c) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment ; but this provision shall not affect costs on any injunction in the action (*e*) :

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(d) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the Court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

(*a*) The Act applies to actions for an injunction as well as to actions for damages, but not to appeals or interlocutory applications. *Fielding* (or *Fielden*) v. *Morley Corporation*, [1899] 1 Ch. 1; 67 L. J. Ch. 611; 79 L. T. 231; 47 W. R. 295; 14 T. L. R. 576; affirmed in the House of Lords, [1900] A. C. 133; 69 L. J. Ch. 314; 82 L. T. 29; 48 W. R. 545; 64 J. P. 484; 16 T. L. R. 219; *Harrop* v. *Mayor of Ossett*, [1898] 1 Ch. 525; 67 L. J. Ch. 347; 78 L. T. 387; 46 W. R. 391; 62 J. P. 297; 14 T. L. R. 308. It applies to an action in which a declaration only is claimed as to the statutory powers of the defendants. *Grand Junction Waterworks Co.* v. *Hampton Urban District Council* (1889), 43 Sol. J. 570; 63 J. P. 503; 15 T. L. R. 412.

The statement of claim in an action against a local authority alleged that they had pulled down the plaintiff's fence and claimed that the land inclosed by it formed part of the highway. It was held that the assertion by the defendants of their right to the land as part of the highway did not give the plaintiff any cause of action, so that he was not entitled to claim a declaration that the land belonged to him, and that the Act applied to his claim in respect of the pulling down of the fence. *Offin* v. *Rochford Rural District Council*, [1906] 1 Ch. 342; 75 L. J. Ch. 348; 94 L. T. 669; 54 W. R. 245; 70 J. P. 97; 4 L. G. R. 595.

Where an agreement had been made between an urban and a rural district council by which certain claims were compromised, and an action was afterwards brought by the urban council claiming a declaration that so far as they were concerned the agreement was *ultra vires*, it was held that the action was not brought for any act done by the defendant council, so that the Act did not apply. *Holsworthy Urban District Council* v. *Holsworthy Rural District Council*, [1907] 2 Ch. 62; 76 L. J. Ch. 389; 97 L. T. 634; 71 J. P. 330; 5 L. G. R. 791; 23 T. L. R. 452.

The Act does not apply to an Admiralty action *in rem*. *The Burns*, [1907] P. 137; 76 L. J. P. 41; 96 L. T. 684; 71 J. P. 193; 5 L. G. R. 676; 23 T. L. R. 323.

A similar provision in s. 106 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), which is repealed by this Act, was held not to apply to proceedings for obtaining compensation for damage done by the construction of public works where the statute provided that the amount should be ascertained by arbitration. *Delany* v. *Metropolitan Board of Works* (1867), L. R. 2 C. P. 532; 36 L. J. C. P. 227; 16 L. T. (N. S.) 386; 15 W. R. 841; affirmed (1867), L. R. 3 C. P. 111; 37 L. J. C. P. 59; 17 L. T. (N. S.) 262; 16 W. R. 137; 31 J. P. 788. As to the application of this Act to proceedings under an arbitration clause in a contract, see *Sharpington* v. *Fulham Guardians*, *post*, p. 539.

This Act deals with procedure only, and is retrospective in the sense that it applies to proceedings commenced after the Act in respect of a right of action which accrued before the Act came into force. *The Ydun*, [1899] P. 236; 68 L. J. P. 101; 81 L. T. 10; 15 T. L. R. 361.

(*b*) The Act has been held to apply to an action for an injunction to restrain the defendants from using land as a cemetery contrary to the provisions of the Burial Acts, *Toms* v. *Clacton Urban District Council*, (1898) 78 L. T. 712; 46 W. R. 629; 62 J. P. 505; 14 T. L. R. 474; to an action for an injunction to restrain a local authority from infringing a building scheme relating to surplus lands sold by them, *Holford* v. *Acton Urban District Council*, [1898] 2 Ch. 240; 67 L. J. Ch. 636; 78 L. T. 829; 14 T. L. R. 476; and for an injunction to prevent the use of buildings as a small-pox hospital, *Harrop* v. *Mayor of Ossett*, *supra*; and for an injunction to restrain the defendants from trespassing in respect of an aqueduct which they were empowered by a local Act to make across the plaintiff's land, *Fielding* v. *Morley Corporation*, *supra*; to an action for damages in respect of injury to the plaintiff's vessel caused by the negligence of the defendants acting as a harbour authority under

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a local Act, *The Ydun, supra;* to an action brought to recover the expense of repairing a drain in compliance with a notice served by the defendants on the plaintiffs under the Public Health (London) Act, 1891, where it was discovered that the drain was in fact a sewer and as such repairable by the defendants, *Cree* v. *St. Pancras Vestry*, [1899] 1 Q. B. 693; 68 L. J. Q. B. 389; 80 L. T. 388; to an action of trespass brought against officials of a county council who had by direction of the council used a road over the plaintiff's land for the purpose of asserting the right of the public to use it as a highway, *Greenwell* v. *Howell*, [1900] 1 Q. B. 535; 69 L. J. Q. B. 461; 82 L. T. 183; 64 J. P. 4; 16 T. L. R. 235; to an action for infringement of a patent for electricity meters, where the defendants were acting under the authority of a provisional order, *Chamberlain* v. *Bradford Corporation*, (1900) 83 L. T. 518; 64 J. P. 806; 17 T. L. R. 62; to an action for libel brought by a schoolmaster against a school board in respect of statements contained in a resolution of the board stating the reasons for his dismissal, *Reid* v. *Blisland School Board*, (1901) 17 T. L. R. 626; and to an action for an injunction to restrain a corporation from obstructing the flow of water in a stream by sluices erected for the purposes of electric lighting works authorised by a provisional order, *Ambler* v. *Bradford Corporation*, [1902] 2 Ch. 585; 71 L. J. Ch. 744; 87 L. T. 217; 66 J. P. 708; 18 T. L. R. 758. But where a claim was made in respect of damage done to the plaintiff's house by a local authority in the course of the demolition of buildings on adjoining land for the purpose of erecting a public library, it was held that the Act did not apply. *Walsh* v. *Southwark Borough Council*, (1908) 72 J. P. 71; 6 L. G. R. 1152. *Sed quære.*

The protection of the Act extends to the carrying on of works authorised by statute as well as to their construction. Thus an action for damages by a passenger on a tramway worked by a local authority under statutory powers in respect of injuries sustained by him through the negligence of the defendants' servants must be brought within six months of the act, neglect, or default complained of. *Parker* v. *London County Council*, [1904] 2 K. B. 501; 73 L. J. K. B. 561; 90 L. T. 415; 52 W. R. 476; 68 J. P. 239; 2 L. G. R. 662; 20 T. L. R. 271; *Lyles* v. *Southend-on-Sea Corporation*, [1905] 2 K. B. 1; 74 L. J. K. B. 484; 92 L. T. 586; 69 J. P. 193; 3 L. G. R. 691; 21 T. L. R. 389.

As to the effect of the words "intended execution of any Act of Parliament, etc.," where a public authority have exceeded the strict limits of their statutory powers, see *The Johannesburg*, (1907) P. 65; 76 L. J. P. 67; 96 L. T. 464.

On the other hand the Act does not apply to a claim against a local authority for damages for breach of an express contract, for instance, a contract to build a house, even though the contract is entered into in discharge of a public duty to provide such a building and would otherwise be *ultra vires*. In such a case what is complained of is not a breach of the public duty, but a breach of the private duty which arises under the contract. *Sharpington* v. *Fulham Guardians*, [1904] 2 Ch. 449; 73 L. J. Ch. 777; 52 W. R. 617; 68 J. P. 510; 2 L. G. R. 1229; 20 T. L. R. 643. See also *Milford Docks Co.* v. *Milford Haven Urban District Council*, (1901) 65 J. P. 483, as to a claim for work done at the request of a local authority. Nor does the Act apply to an action brought to determine the construction of such a contract: *National Telephone Co.* v. *Kingston-upon-Hull Corporation*, (1903) 89 L. T. 291; 51 W. R. 617; 47 Sol. J. 768; 1 L. G. R. 777; nor to an action for damages for fraud by which the plaintiff was induced to enter into the contract. *Pearson* v. *Dublin Corporation*, [1907] 2 Ir. R. 537; 77 L. J. P. C. 1. On the same ground an action for damages for wrongful dismissal has been held not to be within the Act. *Clarke* v. *Lewisham Borough Council*, (1902) 67 J. P. 195; 19 T. L. R. 62.

But where the claim is in substance founded on tort, the fact that it might also be pleaded as a breach of an implied contract does not exclude the application of the Act. *Lyles* v. *Southend-on-Sea Corporation, supra.*

A corporation entered into a contract with a contractor for the hauling of stone along certain roads. An action was afterwards brought against the corporation by the county council as the highway authority to recover the expenses caused to them by extraordinary traffic in the hauling of the stone. It was held that although the corporation were liable for such expenses under s. 12 of the Locomotives Act, 1898, as being the persons in consequence of whose order the damage was done, the Public Authorities Protection Act did not apply because the action was not brought for any act done by them, the contractor not being their servant or agent. *Kent County*

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Council v. *Folkestone Corporation*, [1905] 1 K. B. 620; 74 L. J. K. B. 352; 92 L. T. 309; 53 W. R. 371; 69 J. P. 125; 3 L. G. R. 438; 21 T. L. R. 269.

The protection of the Act does not extend to independent contractors doing under contract and for their own profit the works which a public body is authorised to do. *Kent County Council* v. *Folkestone Corporation, supra; Tilling* v. *Dick Kerr & Co.*, [1905] 1 K. B. 562; 74 L. J. K. B. 359; 92 L. T. 731; 53 W. R. 380; 69 J. P. 172; 3 L. G. R. 369; 21 T. L. R. 281.

The Act has been held not to apply to a claim against a company incorporated by Act of Parliament for the purpose of maintaining a pier and harbour, which was a commercial undertaking intended to earn dividends for the shareholders. *Attorney-General* v. *Margate Pier and Harbour Proprietors*, [1900] 1 Ch. 749; 69 L. J. Ch. 331; 82 L. T. 448; 48 W. R. 518; 64 J. P. 405. But the Tyne Improvement Commission, a body discharging statutory duties with no idea of profit or private gain, has been held to be a public authority within the meaning of the Act. *The Johannesburg, supra*; see also *Williams* v. *Mersey Docks and Harbour Board, infra*, note (c); *English* v. *Metropolitan Water Board*, (1907) 71 J. P. 313; 5 L. G. R. 384; 23 T. L. R. 313. As to the application of the Act to an action brought against a private medical practitioner in respect of a notification of an infectious disease made by him to the medical officer of health in pursuance of a statutory requirement, see *Salisbury* v. *Gould*, (1904) 68 J. P. 158.

The Act does not apply to proceedings by *quo warranto* against a person acting as deputy returning officer at an election of guardians. *R.* v. *Carter*, (1904) 68 J. P. 466.

The repealed section 264 of the Public Health Act, 1875, which contained a similar provision for the protection of persons acting under that Act, was held to apply to an action to recover penalties from a person who had acted as a member of a board of improvement commissioners under the *bonâ fide* belief that he was a member of the board, although in fact he was disqualified for holding the office. *Lea* v. *Facey*, (1887) 19 Q. B. D. 352; 56 L. J. Q. B. 536; 58 L. T. 32; 35 W. R. 721; 51 J. P. 756. But it has been held that s. 224 of the Municipal Corporations Act, 1882 (*ante*, p. 149), which regulates the procedure in actions to recover penalties under that Act, has not been superseded by the provisions of this Act. *Humphriss* v. *Worwood*, (1894) 64 L. J. Q. B. 437. Under another Act it was held that defamatory words spoken by a person acting in the execution of his office were not an act done by him, so that the Act did not apply to an action for slander in respect of such words. *Royal Aquarium* v. *Parkinson*, [1892] 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 40 W. R. 450; 56 J. P. 404; 8 T. L. R. 352.

(*c*) As to the computation of the six months, see *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677; 40 W. R. 63; 56 J. P. 262; 8 T. L. R. 43. Where an action was not brought until after the expiration of the six months, it was held that the defendants were not estopped from relying upon the provisions of the Act by the fact that negotiations had previously taken place for a settlement of the plaintiff's claim, in the absence of any evidence that the plaintiff was led to suppose that they would not rely upon the Act. *Hewlett* v. *London County Council*, (1908) 72 J. P. 136; 24 T. L. R. 331.

In *Cree* v. *St. Pancras Vestry, ante*, p. 539, it was held that the six months ran from the date when the money was expended in compliance with the defendants' notice. It is to be observed, however, that the time limited by this Act runs from the date of the act, neglect, or default complained of, and not from that when the cause of action arose. See *Turley* v. *Daw, post*, p. 542. As to continuing damage where the plaintiff was induced by fraud to enter into a contract for the construction of public works, see the judgment of Lord Atkinson in *Pearson* v. *Dublin Corporation, ante*, p. 539.

Under similar provisions in other Acts of Parliament it has been held that where the cause of action does not arise until damage results from the act complained of (*e.g.*, where the plaintiff's right to support is interfered with by an excavation made by the defendant on his own land), the period of limitation runs from the date when the damage is sustained, and each recurrence of damage constitutes a new cause of action. See *Bonomi* v. *Backhouse*, (1861) E. B. & E. 622; 9 H. L. C. 503; 34 L. J. Q. B. 181; 4 L. T. (N. S.) 754; 7 Jur. (N. S.) 809; *Whitehouse* v. *Fellowes*, (1861) 10 C. B. (N. S.) 765; 30 L. J. C. P. 305; 4 L. T. (N. S.) 177; 9 W. R. 557. Thus under the repealed section 264 of the Public Health Act, 1875, which required that

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the action should be commenced within six months next after the accruing of the cause of action, it was held that where a continuous subsidence of the plaintiff's property had been caused by excavations made by the defendants, a fresh cause of action arose in respect of each successive damage to the plaintiff's property. *Crumbie* v. *Wallsend Local Board*, [1891] 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. 490; 55 J. P. 421; 7 T. L. R. 229.

The words "continuance of injury or damage" do not refer to the case of a damage inflicted once for all which continues unrepaired; they mean the continuance of the act which caused the damage, that is to say, they refer to a continuing act which produces subsequently a recurring damage, whether the act was done once for all or is repeated from day to day. *Carey* v. *Bermondsey Corporation*, (1903) 67 J. P. 447; 2 L. G. R. 219; 20 T. L. R. 2; *Harrington (Earl)* v. *Derby Corporation*, [1905] 1 Ch. 205; 74 L. J. Ch. 219; 92 L. T. 153; 69 J. P. 62; 3 L. G. R. 321; 21 T. L. R. 98. In the first of these cases a claim was made in respect of personal injuries caused by the negligence of the defendants, and it was held that the fact that the plaintiff had not recovered from the effects of the accident did not constitute a continuance of injury or damage within the meaning of the Act. See also *Markey* v. *Tolworth Joint Isolation Hospital District Board* and *Williams* v. *Mersey Docks and Harbour Board*, *infra*. In the second case the plaintiffs complained of the pollution of a river by sewage discharged into it by the defendants, and it was held that there was a continuing cause of action.

Where an action was brought against a local authority claiming damages in respect of the pollution of a stream by sewage which caused the death of the plaintiff's cows, it was held that the act for which the action was brought was the pollution of the stream, which was a continuing injury causing damage from time to time to the plaintiff; and that as the pollution had not ceased at the time when the action was brought, the plaintiff was entitled to recover damages for the loss of his cows although their death had taken place more than six months defore the action was brought. *Hague* v. *Doncaster Rural District Council*, (1908) 100 L. T. 121; 73 J. P. 69; 7 L. G. R. 129; 25 T. L. R. 130.

Where an action was brought under Lord Campbell's Act by the widow of a patient in the defendants' hospital to recover damages in respect of his death, which was caused by the negligence of a nurse in the defendants' employment, it was held that the action must be brought within the limit of time imposed by this Act, viz., six months from the death of the deceased. *Markey* v. *Tolworth Joint Isolation Hospital District Board*, [1900] 2 Q. B. 454; 69 L. J. Q. B. 738; 83 L. T. 28; 64 J. P. 647; 16 T. L. R. 411.

No action can be maintained by the representative of a deceased person under Lord Campbell's Act where the deceased could not have himself maintained an action if he had survived. Where therefore a man sustained injuries from which he died after the lapse of two years, it was held that his widow could not maintain an action for damages after his death against the defendants who were a public authority, because the deceased man could not have maintained an action against them at any time after the lapse of six months from the date of his injury. *Williams* v. *Mersey Docks and Harbour Board*, [1905] 1 K. B. 804; 74 L. J. K. B. 481; 92 L. T. 444; 53 W. R. 488; 69 J. P. 196; 3 L. G. R. 529; 21 T. L. R. 397. The limit of time within which an action may be brought under Lord Campbell's Act is twelve months; but if an action is brought under that Act against a public authority, the limit of six months which is fixed by this Act applies. *Markey* v. *Tolworth Joint Isolation Hospital District Board*, *supra*. In the same way an action to recover expenses caused by extraordinary traffic may be brought within twelve months under s. 12 of the Locomotives Act, 1898; but if the claim is made against a public authority the action must be brought within the time limited by this Act which is not repealed by the Act of 1898. *Kent County Council* v. *Folkestone Corporation*, *ante*, p. 539.

The plaintiff had been convicted and fined by a magistrate, who on default in payment of the fine issued a distress warrant against his goods. The conviction was afterwards quashed for want of jurisdiction. In an action for illegal distress brought by him against the magistrate, it was held that the time limited by this Act ran from the date when the distress was levied, and not from the date of the conviction. *Polley* v. *Fordham*, [1904] 2 K. B. 345; 73 L. J. K. B. 687; 90 L. T. 755; 53 W. R. 48, 188; 68 J. P. 321; 20 T L. R. 435.

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In an action against the high bailiff of a county court for negligence in failing to serve a judgment summons on the plaintiff, in consequence of which the plaintiff was arrested and imprisoned, it was held that the six months ran from the date when the defendant made a return that the judgment summons had been served on the plaintiff and not from the date of the plaintiff's arrest. *Turley* v. *Daw*, (1906) 94 L. T. 216; 22 T. L. R. 231.

(*d*) An order made in chambers by consent dismissing an action with costs is a judgment within the meaning of clause (b), but that clause does not apply to the costs of an appeal. *Shaw* v. *Hertfordshire County Council*, [1899] 2 Q. B. 282; 68 L. J. Q. B. 857; 81 L. T. 208; 63 J. P. 659; 15 T. L. R. 462. It is not necessary that the judgment should contain an express direction that the costs are to be taxed as between solicitor and client, nor that it should show on its face that the action is one falling within the Act. *North Metropolitan Tramways Co.* v. *London County Council*, [1898] 2 Ch. 145; 67 L. J. Ch. 449; 78 L. T. 711; 46 W. R. 554; 62 J. P. 488; 14 T. L. R. 414.

Clause (b) merely provides that, where the defendant is entitled to costs, he is to have costs as between solicitor and client; it does not take away the power to deprive a successful defendant of costs for good cause under Order 65, r. 1, of the Rules of the Supreme Court. *Bostock* v. *Ramsey Urban District Council*, [1900] 2 Q. B. 616; 69 L. J. Q. B. 945; 83 L. T. 358; 64 J. P. 660; 16 T. L. R. 520; overruling on this point *Cree* v. *St. Pancras Vestry*, *ante*, p. 539. In giving judgment in that case in the Court below Lord Russell, C.J., said ([1900] 1 Q. B. at p. 364): "I may add, although it is not necessary for me to decide the point, that I am by no means clear that, even where the judge intends the defendants to get costs, he has not equally a discretion to say where there is 'good cause' that they shall be taxed as between party and party and not as between solicitor and client. I am not sure that the discretion given by Order LXV. does not apply to both the question whether the defendants shall get any costs at all, and also to the question, where they get them, of the scale upon which the costs shall be taxed." No opinion was expressed upon this point in the Court of Appeal.

Where the plaintiff succeeded except upon one issue, he was given the costs of the action as between party and party, and the defendants were given the costs as between solicitor and client of the issue on which they had succeeded, the two sets of costs to be set off against each other. *Roberts* v. *Gwyrfai Rural District Council*, [1899] 1 Ch. 583; 68 L. J. Ch. 233; 80 L. T. 107; 47 W. R. 376; 63 J. P. 181; 15 T. L. R. 165; affirmed on appeal, [1899] 2 Ch. 608; 68 L. J. Ch. 757; 81 L. T. 465; 48 W. R. 51; 63 J. P. 707; 16 T. L. R. 2. See also *Leckhampton Quarries* v. *Ballinger*, (1904) 69 J. P. 54; 3 L. G. R. 940.

Where the action is brought in the County Court, the costs are to be taxed on the scale applicable in the County Court as between solicitor and client in accordance with the provisions of the County Courts Act, 1888, s. 118. *Tory* v. *Dorchester Corporation*, [1907] 1 K. B. 393; 76 L. J. K. B. 273; 96 L. T. 121; 71 J. P. 88; 5 L. G. R. 132.

(*e*) This clause, like clause (b), applies only to cases where a judgment has been obtained. It does not apply to a case where money paid into court has been accepted by the plaintiff and the action has simply been discontinued. *Smith* v. *Northleach Rural District Council*, [1902] 1 Ch. 197; 71 L. J. Ch. 8; 85 L. T. 449; 50 W. R. 104; 66 J. P. 88; 18 T. L. R. 30.

The terms of this clause as to costs differ from those of clause (b) and appear to give the defendant an absolute right to his costs as between solicitor and client. See the judgment of Vaughan Williams, L.J., in *Bostock* v. *Ramsey Urban District Council*, *supra*, note (*d*).

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

(a) the proceeding is to be commenced in any particular place; or

(b) the proceeding is to be commenced within any particular time; or

(c) notice of action is to be given; or

(d) the defendant is to be entitled to any particular kind or amount

of costs, or the plaintiff is to be deprived of costs in any specified event; or

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(e) the defendant may plead the general issue;

and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent in that schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act.

The schedule contains a long list of repealed enactments which it is not necessary to set out here. Section 226, sub-ss. (1) and (2) of the Municipal Corporations Act, 1882, are not included in the schedule.

Saving as to Scotland.

3. This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding.

Commencement.

4. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

Short title.

5. This Act may be cited as the Public Authorities Protection Act, 1893.

THE LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. c. 73.)

An Act to make further provision for Local Government in England and Wales. [5th March, 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

PARISH MEETINGS AND PARISH COUNCILS.

* * * * *

Powers and Duties of Parish Councils and Parish Meetings.

* * * * *

The following provisions of this Part relating to the powers and duties of parish councils are here set out because any of such powers or duties may be conferred on the council of a borough by an order of the Local Government Board made under s. 33 (1), *post.*

Transfer of certain powers of vestry and other authorities to parish council.

6.—(1.) Upon the parish council of a rural parish coming into office, there shall be transferred to that council :—

(a) The powers, duties, and liabilities of the vestry of the parish except—

(i.) so far as relates to the affairs of the church or to ecclesiastical charities (*a*) ; and

(ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority :

(b) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855 : Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate (*b*).

18 & 19 Vict. c. 128.

(c) The powers, duties, and liabilities of the overseers or of the

churchwardens and overseers of the parish with respect to— Part I. Section 6.

(i.) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate (*c*); and

(ii.) the provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto (*d*); and

(iii.) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them (*e*);

(d) The powers exerciseable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property (*f*).

(2.) A parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890, but without prejudice to the powers of such householders. 53 & 54 Vict. c. 70.

* * * * *

(*a*) See the definitions of "vestry," "affairs of the church," and "ecclesiastical charity" in s. 75, *post*.

(*b*) By s. 18 of the Burial Act, 1855 (18 & 19 Vict. c. 128), where a churchyard has been closed for burials by Order in Council, the churchwardens are required to maintain it in decent order and to repair the walls and fences. The cost is to be repaid by the overseers upon the certificate of the churchwardens out of the poor rate, unless there is some other fund legally chargeable therewith. It is to be observed that the obligation imposed by that section will continue to rest with the churchwardens so long as they can meet the expenses incurred without having recourse to the poor rate.

(*c*) The appeals and objections here referred to are (1) appeals and objections made by the overseers in respect of the valuation list under ss. 32 and 18 of the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103); and (2) appeals by ratepayers, where the overseers are respondents. Objections made by ratepayers to the valuation list are not affected by this section, and notice of such objections must still be given to the assessment committee and the overseers under 25 & 26 Vict. c. 103, s. 18. As to the service of notice of appeal, see *Reg.* v. *De Grey*, [1900] 1 Q. B. 521; 69 L. J. Q. B. 341; 82 L. T. 324; 48 W. R. 348; 64 J. P. 375; 16 T. L. R. 182; *R.* v. *Tewkesbury Justices*, [1903] 1 K. B. 39; 72 L. J. K. B. 41.

(*d*) As to the provision of a vestry room or parochial office, see 13 & 14 Vict. c. 57, s. 4; 24 & 25 Vict. c. 125, s. 1. A parish chest may be provided under 52 Geo. 3, c. 146, s. 5, for containing the registers of baptisms, marriages, and burials; and proper depositories for the documents, books, and papers belonging to the parish may be provided under 24 & 25 Vict. c. 125, s. 2.

(*e*) The legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church or held for an ecclesiastical charity, is vested in the parish council, subject to all trusts and liabilities affecting the same, by s. 5 (2) (c) of this Act.

(*f*) See 5 & 6 Will. 4, c. 69, s. 3, and 5 & 6 Vict. c. 18, s. 2.

7.—(1.) As from the appointed day, in every rural parish the parish meeting shall, exclusively, have the power of adopting any of the Transfer of powers under adoptive Acts.

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following Acts, inclusive of any Acts amending the same (all which Acts are in this Act referred to as " the adoptive Acts "), namely,—

(a) The Lighting and Watching Act, 1833 ;

(b) The Baths and Washhouses Acts, 1846 to 1882 ;

(c) The Burial Acts, 1852 to 1885 ;

(d) The Public Improvements Act, 1860 ;

(e) The Public Libraries Act, 1892.

3 & 4 Will. 4, c. 90.
9 & 10 Vict. c. 74.
45 & 46 Vict. c. 30.
15 & 16 Vict. c. 85.
48 & 49 Vict. c. 21.
23 & 24 Vict. c. 30.
55 & 56 Vict. c. 53.

(2.) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

(3.) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression " vestry " shall include any meeting of ratepayers or voters.

(4.) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part.

(5.) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

(6.) This Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts, and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable.

(7.) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

(8.) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

The Acts referred to in this section as " the adoptive Acts " are the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90) ; the Baths and Washhouses Acts, 1846 to 1882 (9 & 10 Vict. c. 74 ; 10 & 11 Vict. c. 61 ; 41 & 42 Vict. c. 14 ; 45 & 46 Vict. c. 30) ; the Burial Acts, 1852 to 1885 (15 & 16 Vict. c. 85 ; 16 & 17 Vict. c. 134 ; 17 & 18 Vict. c. 87 ; 18 & 19 Vict. c. 128 ; 20 & 21 Vict. c. 81 ; 22 & 23 Vict. c. 1 ; 23 & 24 Vict. c. 64 ; 25 & 26 Vict. c. 100 ; 34 & 35 Vict. c. 33 ; 43 & 44 Vict. c. 41 ; 44 & 45 Vict. c. 2 ; 48 & 49 Vict. c. 21) ; the Public Improvements Act, 1860 (23 & 24 Vict. c. 30) ; and the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), and any Acts amending the same. The Baths and Washhouses Acts have since been amended by 62 & 63 Vict. c. 29 ; the Burial Acts by 63 & 64 Vict. c. 15 ; and the Public Libraries Act by 56 & 57 Vict. c. 11, and 1 Edw. 7, c. 19.

The power of adopting any of these Acts (except the Public Libraries Act, 1892, as to which see the note to s. 1 of that Act, *ante*, p. 522) remains with the vestry in an urban district, and cannot be conferred upon a borough council by an order made

under s. 33, *post*. The approval of the borough council, however, is now required by s. 62 (2), *post*, before any of these Acts can be adopted for any part of a borough. The borough council are already the authority for the execution of these Acts in a borough.

The provisions of the Lighting and Watching Act, 1833, are superseded in an urban district by those contained in the Public Health Act, 1875 (38 & 39 Vict. c. 55). See s. 163 of that Act.

Additional powers of parish council.

8.—(1.) A parish council shall have the following additional powers, namely, power—

(a) to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and

(b) to provide or acquire land for such buildings and for a recreation ground and for public walks; and

(c) to apply to the Board of Agriculture under section nine of the Commons Act, 1876; and

39 & 40 Vict. c. 56.

(d) to exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections; and

38 & 39 Vict. c. 55.

53 & 54 Vict. c. 59.

(e) to utilise any well, spring, or stream within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person; and

(f) to deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority; and

(g) to acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof; and

(h) to accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; and

(i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity; and

(k) to contribute towards the expense of doing any of the things

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above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

(2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

(3.) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

(4.) Notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate.

Powers for acquisition of land.

9.—(1.) For the purpose of the acquisition of land by a parish council, the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

38 & 39 Vict. c. 55.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

(3.) If on any such representation, [*or on any proceeding under the Allotments Acts*, 1887 *and* 1890,] a county council are satisfied that suitable land for the said purpose of the parish council [*or for the purpose of allotments* (*as the case may be*)], cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(5.) If the county council refuse to make any such order, the parish council, [*or, if the proceeding is taken on the petition of the district council, then the district council,*] may petition the Local Government Board,

and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

(a) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

(b) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:

(c) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry.

(9.) The order shall be carried into effect, [*when made on the petition of a district council, by that council, and in any other case*] by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a), (b), and (c) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

8 & 9 Vict. c. 20.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities

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or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

(13.) [*Sub-section* (2) *of section* 2, *if the land is taken for allotments, and, whether it is or is not so taken,*] sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

50 & 51 Vict. c. 48.
53 & 54 Vict. c. 65.

(14.) Where the land is acquired [*otherwise than for allotments,*] it shall be assured to the parish council; [*and any land purchased by a county council for allotments under the Allotments Acts,* 1887 *and* 1890, *and this Act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act,* 1887, *shall apply as if the parish council were the sanitary authority.*]

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

* * * * *

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

The words printed in italics were repealed by the Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54). The Allotments Acts, 1887 and 1890, have been repealed by the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), except sub-ss. (4) to (8) of s. 3 of the Act of 1887 so far as these are applied by any other enactment. As to the power of a borough council to acquire land for allotments, see now s. 25 of the Act of 1908.

* * * * *

13.—(1.)* * * * *

(2.) A parish council may, subject to the provisions of this Act with respect to restrictions on expenditure, undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance.

This power to repair footpaths may be conferred upon a borough council by an order made under s. 33, *post.* Apart from such order, a borough council have no power to repair footpaths except in cases where a legal liability on their part to repair exists. See *Eyre* v. *New Forest Highway Board*, (1892) 56 J.P. 517; 8 T. L. R. 648.

Public property and charities.

14.—(1.) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants

of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same (*a*).

(2.) Where overseers of a rural parish as such are, either alone or jointly with any other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons not exceeding the number of the overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers (*b*).

(3.) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the ratepayers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case ; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee, and one by the parish council or parish meeting. Nothing in this sub-section shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity (*c*).

(4.) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council (*d*).

(5.) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall, on or before the publication of the notice of the proposal to make an order for such scheme in accordance with section six of the Charitable Trusts Act, 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme (*e*).

23 & 24 Vict. c. 136.

(6.) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the Charitable Trusts Amendment Act, 1855, shall apply with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish meeting for the churchwardens, and the names of the beneficiaries of dole charities

18 & 19 Vict. c. 124.

Part I. Section 14.

shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit (*f*).

(7.) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one-half, as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

(8.) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or, in the case of a charity founded before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

(9.) Whilst a person is trustee of a parochial charity he shall not, nor shall his wife or any of his children, receive any benefit from the charity.

(*a*) The powers and duties of a parish council under thus section may be conferred upon the council of any municipal borough, including a county borough, by an order of the Local Government Board made under s. 33, *post*. The order may under certain conditions provide that the appointment of trustees by the town council is to be made on the nomination of the councillors elected for the ward in which the parish to which the charity belongs is comprised (s. 33 (2)). Any question that arises as to the appointment of trustees is to be determined by the Charity Commissioners, subject to an appeal to the High Court under s. 70 (2).

It is to be observed that sub-s. (1) is merely permissive. No qualification is required to be held by persons appointed trustees under this section.

The expressions "trustees" and "ecclesiastical charity" are defined by s. 75, *post*. As to the constitution and functions of the Charity Commissioners, see the Charitable Trusts Acts, 1853 to 1891.

This section does not affect the trusteeship of any elementary school. See s. 66, *post*.

(*b*) For definitions of "parochial charity" and "ecclesiastical charity," see s. 75, *post*.

The provisions of this sub-section do not apply to any charity until the expiration of forty years from its foundation. See sub-s. (8), *infra*. Trustees may be appointed in place of the overseers where the latter are either sole or joint trustees of any parochial charity, whether ecclesiastical or not The churchwardens can only be replaced where they are trustees of a parochial charity which is not ecclesiastical; but the power of appointing trustees in their place extends to cases in which the endowment is vested in the churchwardens alone, and is not confined to cases in which they are joint trustees with the overseers. *In re Ross' Charity*, [1899] 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52; 15 T. L. R. 42.

(*c*) The application of this sub-section also is limited by sub-s. (8), *infra*, to charities of forty years' standing. As to the power of the Charity Commissioners to frame schemes in relation to charities, reference should be made to the provisions of the Charitable Trusts Acts, 1853 to 1891 (16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110; 54 & 55 Vict. c. 17); and especially to ss. 54—60 of the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137). By that Act, where it appears to the Commissioners, upon the application of any trustees or persons interested in the benefits of any charity, or upon the report of an inspector, that it is desirable to have a new scheme for the application or management of the charity, and that the authority of Parliament is required in order to carry the scheme into complete effect, they may provisionally approve a scheme. One month's public notice of the proposed scheme must be given before it is provisionally approved, and the Board must consider any objections or suggestions that may be made, and

may, if they see fit, direct one of their inspectors to hold a local inquiry into the matter. The Commissioners may then approve the scheme, either with or without modification. Every scheme so approved must be certified by the Commissioners, who are required to make an annual report to Parliament setting forth all schemes approved by them. See also s. 2 of the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), which empowers the Commissioners to make such orders for the establishment of a scheme as might have been made by the Court of Chancery.

(*d*) It will be noticed that this sub-section applies to any non-ecclesiastical charity, whether it is a parochial charity within the definition in s. 75, *post*, or not.

(*e*) By s. 6 of the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), the Charity Commissioners are required to give one month's public notice of the proposal to make an order establishing a scheme for the administration of any charity. The notice must be given in such manner as to ensure its publicity in each parish or district to which the scheme applies, and must contain particulars of the objects of the proposed order. Objections or suggestions may be made within a reasonable time to be prescribed by the notice, and must be considered by the Commissioners, who may withhold, suspend, or modify the proposed order as they think expedient. Section 7 provides for the deposit of a copy of every order in the parish or district to which it applies, and at the office of the Commissioners, to be open to public inspection during one month.

By s. 8 of the same Act an appeal may be made to the Court of Chancery against any such order by the Attorney-General or any person authorised by him or by the Commissioners in the case of any charity, or in the case of a charity the gross yearly income of which exceeds 50*l.*, by any trustee of the charity or any two inhabitants of any parish or district in which it is specially applicable. This right of appeal, however, appears to be confined in every case by s. 10 of the Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), to the Attorney-General and any person authorised by him or by the Commissioners. See *Re Hackney Charities, Ex parte Nicholls*, (1865) 4 De G. J. & S. 588; 34 L. J. Ch. 169; 11 L. T. (N. S.) 758; 11 Jur. (N. S.) 126; 13 W. R. 398.

(*f*) As to the duty of the trustees of a charity to keep accounts in relation to the charity, see 16 & 17 Vict. c. 137, ss. 10, 61; and 18 & 19 Vict. c. 124, s. 6. Section 44 of the latter Act requires the trustees of every charity to prepare accounts on or before the 25th of March in every year of the gross income of the endowment, and of all moneys received and paid during the year, and of all moneys owing to or from the charity. A copy of such accounts is to be sent to the Commissioners, and, in the case of parochial charities, a second copy is to be sent to the churchwardens of the parish, who are to present it at the next vestry meeting. A copy of the accounts is to be entered in the minutes of the vestry, and is to be open to public inspection.

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17. * * * * *

(8.) The custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the Church or to ecclesiastical charities, except documents directed by law to be kept with the public books, writings, and papers of the parish, shall remain as provided by the existing law unaffected by this Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. The incumbent and churchwardens on the one part, and the parish council on the other, shall have reasonable access to all such books, documents, writings, and papers, as are referred to in this sub-section, and any difference as to custody or access shall be determined by the county council.

(9.) Every county council shall from time to time inquire into the manner in which the public books, writings, papers, and documents under the control of the parish council or parish meeting, are kept with

Part I. Section 17.

a view to the proper preservation thereof, and shall make such orders as they think necessary for such preservation, and those orders shall be complied with by the parish council or parish meeting.

Among the documents with respect to the custody of which directions may be given under this sub-section are inclosure awards (see 8 & 9 Vict. c. 118, s. 146) and tithe apportionments and maps (see 6 & 7 Will. 4, c. 71, s. 64; and *Lewis* v. *Poole*, [1898] 1 Q. B. 164; 67 L. J. Q. B. 73; 77 L. T. 369; 46 W. R. 93; 61 J. P. 776; 14 T. L. R. 15).

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PART II.

GUARDIANS AND DISTRICT COUNCILS.

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Names of county districts and district councils.

21. As from the appointed day,—

(1.) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts; but nothing in this section shall alter the style or title of the corporation or council of a borough:

(2.) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district:

(3.) In this and every other Act of Parliament, unless the context otherwise requires, the expression "district council" shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression "county district" shall include every urban and rural district whether a borough or not.

By s. 6 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), the town council is the urban sanitary authority in a borough. As to the style or title of the borough council, see the note to s. 8 of the Municipal Corporations Act, 1882, *ante*, p. 5.

Part II. of this Act (ss. 20—35) does not apply to a county borough except where this is expressly provided. See s. 35, *post*. In other parts of the Act the expression urban district includes a county borough. *Kirkdale Burial Board* v. *Liverpool Corporation*, [1904] 1 Ch. 829; 73 L. J. Ch. 529; 91 L. T. 28; 52 W. R. 427; 68 J. P. 289; 2 L. G. R. 763; 20 T. L. R. 406.

Chairman of council to be justice.

22. The chairman of a district council unless a woman or personally disqualified by any Act shall be by virtue of his office justice of the peace for the county in which the district is situate, but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace [*other than the oath respecting the qualification by estate*].

By s. 21 (3), *ante*, the expression "district council" includes the council of a borough other than a county borough. The mayor of such a borough is now, therefore, during his term of office not only a justice of the peace for the borough, as provided by s. 155 of the Municipal Corporations Act, 1882, *ante*, p. 116, but a justice of the peace for the county in which the borough is situate. He ceases, however, to be a justice for the county at the end of his term of office, although he continues to be a justice for the borough during the ensuing year.

Bankruptcy is a disqualification for the office of justice of the peace (46 & 47 Vict. c. 52, s. 32; 53 & 54 Vict. c. 71, s. 9). The sheriff of a county may not act as a justice of the peace for that county (50 & 51 Vict. c. 55, s. 17), but the office of coroner is not incompatible with that of justice of the peace for the same county. *Davis* v. *Justices of Pembrokeshire*, (1881) 7 Q. B. D. 513.

A solicitor may now be appointed a county justice, but in that case he may not nor may his partner practise before the justices for that county or any borough within the county. 6 Edw. 7, c. 16, s. 3, *post*. By section 4 of that Act any person who is a justice of the peace by virtue only of holding or having held any office may be excluded from the exercise of his functions as such justice by the same authority by which other justices can be removed from the commission of the peace.

Where a clerk to county justices was elected mayor of a borough situate in the county, and thus became a justice of the peace for the county, it was held that the two offices were incompatible, and that by accepting the office of mayor he had vacated the office of clerk to the justices. *Reg.* v. *Douglas*, [1898] 1 Q. B. 560; 67 L. J. Q. B. 406; 78 L. T. 198; 46 W. R. 377.

The chairman of a county council is by virtue of his office a justice of the peace for the county. Local Government Act, 1888, s. 2 (5). An unmarried woman may now be elected chairman of a county council or mayor of a borough, but is not to be a justice of the peace by virtue of holding or having held such office. 7 Edw. 7, c. 33, s. 1, *post*. See note (*e*) to s. 11 of the Municipal Corporations Act, 1882, *ante*.

As to the oaths required to be taken by justices, see the note to s. 157 of the Municipal Corporations Act, 1882, *ante*, p. 117. The words printed in italics have been repealed by s. 5 of the Justices of the Peace Act, 1906 (6 Edw. 7, c. 16), *post*, which has abolished the qualification by estate which was formerly required in the case of a county justice. A chairman of a district council who has been re-elected to that office on the expiration or other determination of a previous term of office may continue to act as a justice of the peace without again taking the oaths referred to in this section. 59 & 60 Vict. c. 22, s. 1.

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Duties and powers of district council as to rights of way, rights of common, and roadside wastes.

26.—(1.) It shall be the duty of every district council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within their district or in an adjoining district in the county or counties in which the district is situate, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and to prevent any unlawful encroachment on any roadside waste within their district (*a*).

(2.) A district council may with the consent of the county council for the county within which any common land is situate aid persons in maintaining rights of common where, in the opinion of the council, the extinction of such rights would be prejudicial to the inhabitants of the district; and may with the like consent exercise in relation to any common within their district all such powers as may, under section eight of the Commons Act, 1876, be exercised by an urban sanitary authority in relation to any common referred to in that section; and notice of any application to the Board of Agriculture in relation to any common within their district shall be served upon the district council (*b*).

39 & 40 Vict. c. 56.

(3.) A district council may, for the purpose of carrying into effect this section, institute or defend any legal proceedings, and generally take such steps as they deem expedient (*c*).

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(5.) Any proceedings or steps taken by a district council or county council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist.

(6.) Nothing in this section shall affect the powers of the county council in relation to roadside wastes (*d*).

Part II. Section 26.

(7.) Nothing in this section shall prejudice any powers exerciseable by an urban sanitary authority at the passing of this Act, and the council of every county borough shall have the additional powers conferred on a district council by this section.

(*a*) The council of a borough, including a county borough, are a district council within the meaning of this section; see s. 21 (3), *ante*, and sub-s. (7) of this section. A borough council are the highway authority within the borough by virtue of s. 144 of the Public Health Act, 1875 (38 & 39 Vict. c. 55).

(*b*) Section 8 of the Commons Act, 1876 (39 & 40 Vict. c. 56), gives an urban authority the right to appear at any local inquiry held on an application for the inclosure or regulation of a common situate in or near their district, and under certain conditions to make an application themselves for the regulation of any such common. They are also empowered to acquire any such common by gift and hold it on trust for the benefit of their town, and to purchase rights of common and to take other steps for the benefit of their town in relation to any such common.

Reference should also be made to Part I. of the Commons Act, 1899 (62 & 63 Vict. c. 30), which enables a district council (including the council of a borough) to make a scheme, to be approved by the Board of Agriculture, for the regulation and management of any common within their district, with a view to the making of byelaws for the prevention of nuisances and the preservation of order on the common. The management of any common regulated by a scheme under the Act is to be vested in the district council, who may acquire by gift or purchase any rights over the common. The council of any urban district may, with a view to the benefit of the inhabitants of their district, and with the approval of the Local Government Board, contribute to the expenses incurred by any other council in executing a scheme made by them under the Act.

(*c*) This sub-section empowers a district council to contribute to the costs of defending an action brought against a private individual who has removed an obstruction to a public right of way. *R.* v. *Norfolk County Council*, [1901] 2 K. B. 268; 70 L. J. K. B. 575; 84 L. T. 822; 49 W. R. 543; 65 J. P. 454; 17 T. L. R. 437.

(*d*) Section 11 (1) of the Local Government Act, 1888 (51 & 52 Vict. c. 41), provides that the county council are to maintain and repair every main road in their county, and are to have the same powers as a highway board for preventing and removing obstructions and for asserting the right of the public to the use and enjoyment of the roadside wastes.

Transfer of certain powers of justices to district councils.

27.—(1.) As from the appointed day the powers, duties, and liabilities of justices out of session in relation to any of the matters following, that is to say,—

(a) the licensing of gang masters (*a*);
(b) the grant of pawnbrokers' certificates (*b*);
(c) the licensing of dealers in game (c);
(d) the grant of licences for passage brokers and emigrant runners (*d*);
(e) the abolition of fairs and alteration of days for holding fairs (*e*);
(f) the execution as the local authority of the Acts relating to petroleum and infant life protection (*f*);

when arising within a county district, shall be transferred to the district council of the district (*g*).

(2.) As from the appointed day, the powers, duties, and liabilities of quarter sessions in relation to the licensing of knackers' yards within a county district shall be transferred to the district council of the district (*h*).

(3.) All fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council.

(*a*) A gang master is a person who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own

occupation. No person may act as a gang master without a licence, which is to be in force for six months, and must be granted on proof that the applicant is a person of good character and a fit person to be intrusted with the management of an agricultural gang. An appeal lies to quarter sessions against the refusal of such a licence. See the Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130).

(*b*) Pawnbrokers' certificates, which are in force for one year, are granted under ss. 40—44 of the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93). An application for a certificate can only be refused on the ground that the applicant has failed to produce satisfactory evidence of good character; or that the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character; or that he has not complied with the requirements of the Act as to the notices to be given of the application. An appeal lies to quarter sessions, under s. 52, against the refusal to grant a certificate.

(*c*) A licence to deal in game remains in force for a year, and may be granted under 1 & 2 Will. 4, c. 32, s. 18, to any householder or keeper of a shop or stall, except certain persons mentioned in that section.

(*d*) The licensing authority for passage brokers and emigrant runners is now (except in London) the county council. See ss. 343 and 348 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

(*e*) By the Fairs Acts, 1871 and 1873 (34 & 35 Vict. c. 12; 36 & 37 Vict. c. 37), the Home Secretary is empowered, upon representation made by the justices of the district, to order a fair to be abolished, or the days on which it is held to be altered. In the first case the consent of the owner of the fair must be obtained. Notice of any such representation or order must be published in the manner required by the Acts.

(*f*) The Acts relating to petroleum are 34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; 44 & 45 Vict. c. 67. Under 34 & 35 Vict. c. 105, the town council were the local authority for the execution of these Acts, except in the case of a harbour within the jurisdiction of a harbour authority.

As regards infant life protection, the Act now in force is the Children Act, 1908 (8 Edw. 7, c. 67). By s. 10 of that Act the local authority is now in all places except London the board of guardians.

(*g*) As to the transfer of the property and debts and liabilities held and incurred by the justices in relation to the matters specified in this section, see s. 67, *post*. The expression "district council" includes the council of a borough (s. 21); and the provisions of this section are made applicable to the council of a county borough by s. 32, *post*.

(*h*) The licences here referred to are granted under 26 Geo. 3, c. 71, as amended by 7 & 8 Vict. c. 87. A licence under these Acts is granted upon the certificate of the minister and churchwardens or overseers, or of the minister and two or more substantial householders, that the applicant is fit and proper to be trusted with the management and carrying on of such business. The licence is in force for a year only, and may be cancelled on proof that the holder has been guilty of any breach of the Acts above mentioned.

28. The expenses incurred by the council of an urban district in the execution of the additional powers conferred on the council by this Act shall, subject to the provisions of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the Public Health Act, 1875.

Expenses of urban district council.

38 & 39 Vict. c. 55.

As to the application of the borough fund or borough rate, see s. 140 of the Municipal Corporations Act, 1882, and the notes thereto, *ante*, p. 105.

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32. The provisions of this Part of this Act respecting the powers, duties, and liabilities of justices out of session, or of quarter sessions, which are transferred to a district council, shall apply to a county

Application to county boroughs of provisions as

Part II. Section 32.

borough as if it were an urban district, and the county borough council were a district council.

to transfer of justices' powers.

The provisions here referred to are those contained in s. 27, *ante*. A county borough council is excluded from the definition of "district council" in s. 21, *ante*, by s. 35, *post*.

Power to apply certain provisions of Act to urban districts and London.

33.—(1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto (*a*).

(2.) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish (*b*).

(3.) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

(4.) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

(5.) An order under this section may also be made on the application of any representative body within a borough or district.

(6.) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district.

(7.) The Local Government Board shall consult the Charity Commissioners before making any order under this section with respect to any charity.

(*a*) The overseers have hitherto been nominated annually by the vestry and appointed by the justices under 43 Eliz. c. 2, s. 1, and 12 & 13 Vict. c. 8. The appointment of an assistant overseer is made in an urban district by the justices on the nomination of the vestry under 59 Geo. 3, c. 12, s. 7, which provides that he is to hold the office until he resigns it or his appointment is revoked by the vestry. The power of a board of guardians to appoint an assistant overseer under 7 & 8 Vict. c. 101, s. 61, has been taken away by s. 81 (6) of this Act. The appointment of overseers must be notified to the guardians under s. 50, *post*.

The most important of the powers and duties of the overseers which may be conferred on a town council by an order made under this section are those which relate to the making and collection of the poor rate, the preparation of valuation lists, and the registration of electors. Where such an order has been made, the poor rate will

still have to be allowed by justices and published as heretofore, and the valuation lists will still have to be approved by the assessment committee of the board of guardians. Where a town council have been invested with the powers and duties of overseers, or with the power of appointing them, the powers of the vestry under ss. 3 and 4 of the Poor Rate Assessment and Collection Act, 1869, may also be conferred on the town council under s. 34, *post*.

For the powers, duties, and liabilities of a parish council, see ss. 6—17 of this Act, *ante*. Among the most important are those which relate to the appointment of trustees of parochial charities (s. 14), and the custody of parish books and documents (s. 17 (8)).

(*b*) This sub-section applies to cases in which an order has been made under sub-s. (1) of this section, conferring on the borough council the powers of a parish council with respect to the appointment of trustees of the charities belonging to a parish in the borough. As to those powers, see the notes to s. 14, *ante*.

Supplemental provisions as to control of overseers in urban districts.

34. Where an order of the Local Government Board under this Act confers on the council of an urban district, or some other representative body within the district, either the appointment of overseers and assistant overseers or the powers, duties, and liabilities of overseers, that order or any subsequent order of the Board may confer on such council or body the powers of the vestry under the third and fourth sections of the Poor Rate Assessment and Collection Act, 1869.

32 & 33 Vict. c. 41.

The order here referred to is one made under s. 33 (1), *ante*. Sections 3 and 4 of the Poor Rate Assessment and Collection Act, 1869, are set out, *ante*, p. 250.

Restrictions on application of Act to London, &c.

35. Save as specially provided by this Act, this Part of this Act shall not apply to the administrative county of London or to a county borough.

This Part of the Act, Part II., comprises ss. 20—35. Provisions expressly relating to county boroughs are contained in ss. 26 (7), 30, 32, 33, and 34. In other parts of the Act the expression urban district includes a county borough. See the note to s. 21, *ante*.

Part III.

Areas and Boundaries.

Duties and powers of county council with respect to areas and boundaries.

36.—(1.) For the purpose of carrying this Act into effect in the case of—

(a) every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county; and

(b) every parish which at the passing of this Act is situate partly within and partly without a sanitary district; and

(c) every rural parish which has a population of less than two hundred; and

(d) every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and

(e) every rural parish which is co-extensive with a rural sanitary district;

every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in section fifty-seven of the Local Government Act,

Part III. Section 36.

1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely :—

(i.) the whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county :

(ii.) the whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district ; and

(iii.) every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts.

(2.) Where a parish is at the passing of this Act situate in more than one urban district, the parts of the parish in each such district shall, as from the appointed day, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vict. c. 61.

(3.) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4.) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council.

(5.) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

See this section, *ante*, p. 437.

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50 & 51 Vict. c. 61.

(12.) Every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration before framing any order under the powers conferred on them under this Act.

(13.) Every county council shall, within two years after the passing of this Act, or within such further period as the Local Government

Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration of the said two years or further period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers. Part III. Section 36.

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Part IV.

Supplemental.

Parish Meetings and Elections.

43. For the purposes of this Act a woman shall not be disqualified by marriage for being on any local government register of electors, or for being an elector of any local authority, provided that a husband and wife shall not both be qualified in respect of the same property. Removal of disqualification of married women.

The term "local government register of electors" means the county register or the burgess roll. See s. 17 of the Interpretation Act, 1889, *ante*. Before this Act was passed an unmarried woman, if duly qualified, was entitled to be enrolled in the local government register, and to vote at municipal elections by virtue of s. 63 of the Municipal Corporations Act, 1882 (*ante*, p. 65), but a married woman remained disqualified. The effect of this section is to remove the disqualification by reason of coverture, for the purposes of this Act only. A married woman is not entitled under this provision to be enrolled in the local government register for all purposes. She is only entitled to vote as a parochial elector, and her name is therefore to be printed in a separate list, as provided by s. 44 (6), *post*. It is to be observed that this section does not introduce any new qualification; it only removes the disqualification which arose from coverture. No woman, therefore, whether married or single, can be registered as a parochial elector in respect of the ownership of property, because a woman can only be enrolled in the local government register, and ownership of property is not a qualification for enrolment in that register. *Drax* v. *Ffooks*, [1896] 1 Q. B. 238; 65 L. J. Q. B. 270; 74 L. T. 43; 44 W. R. 393; 60 J. P. 214; 1 Smith, 40; 12 T. L. R. 185. See also the note to s. 44, *post*. As to the disqualification of a married woman for being registered as a burgess, see note (*e*) to s. 11 of the Municipal Corporations Act, 1882, *ante*.

44.—(1.) The local government register of electors and the parliamentary register of electors, so far as they relate to a parish shall, together, form the register of the parochial electors of the parish; and any person whose name is not in that register shall not be entitled to attend a meeting or vote as a parochial elector, and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by this or any other Act of Parliament. Register of parochial electors.

(2.) Where the parish is in a parliamentary borough, such portion of the parliamentary register of electors for the county as contains the names of persons registered in respect of the ownership of any property in the parish shall be deemed to form part of the parliamentary register of electors for the parish within the meaning of this section.

(3.) The lists and register of electors in any parish shall be framed in parts for wards of urban districts and parishes in such manner that they may be conveniently used as lists for polling at elections for any such wards.

Part IV. Section 44.

(4.) Nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one register of parochial electors.

(5.) Where in that portion of the parliamentary register of electors which relates to a parish a person is entered to vote in a polling district other than the district comprising the parish, such person shall be entitled to vote as a parochial elector for that parish, and in addition to an asterisk there shall be placed against his name a number consecutive with the other numbers in the list.

(6.) Where the revising barrister in any list of voters for a parish would—

51 Vict. c. 10.

(a) in pursuance of section seven of the County Electors Act, 1888, place an asterisk or other mark against the name of any person; or

(b) in pursuance of section four of the Registration Act, 1885, erase the name of any person otherwise than by reason of that name appearing more than once in the lists for the same parish; or

41 & 42 Vict. c. 26.

48 & 49 Vict. c. 15.

(c) in pursuance of section twenty-eight of the Parliamentary and Municipal Registration Act, 1878, as amended by section five of the Registration Act, 1885, place against the name of a person a note to the effect that such person is not entitled to vote in respect of the qualification contained in the list,

the revising barrister shall, instead of placing that mark or note, or erasing the name, place against the name, if the person is entitled to vote in respect of that entry as a county elector or burgess, a mark signifying that his name should be printed in division three of the list, or if he is entitled to vote only as a parochial elector, a mark signifying that he is entitled to be registered as a parochial elector, and the name so marked shall not be printed in the parliamentary register of electors, but shall be printed, as the case requires, either in division three of the local government register of electors, or in a separate list of parochial electors.

(7.) Where the name of a person is entered both in the ownership list and in the occupation list of voters in the same parish, and the revising barrister places against that name a mark or note signifying that the name should be printed in division three of the lists, an asterisk or other mark shall be there printed against the name, and such person shall not be entitled to vote as a parochial elector in respect of that entry.

(8.) Such separate list shall form part of the register of parochial electors of the parish, and shall be printed at the end of the other lists of electors for the parish, and the names shall be numbered consecutively with the other names on those lists, and the law relating to the register of electors shall, with the necessary modifications, apply accordingly, and the lists shall, for the purposes of this Act, be deemed to be part of such register.

(9.) Any person may claim for the purpose of having his name entered in the parochial electors list, and the law relating to claims to be entered in lists of voters shall apply.

(10.) The clerk of the county council or town clerk, as the case may

be, shall, in printing the lists returned to him by the revising barrister, do everything that is necessary for carrying into effect the provisions of this section with respect to the persons whose names are marked by the revising barrister in pursuance of this section.

The parliamentary register consists of persons who are qualified either as ownership electors or as occupation electors. The local government register consists of persons who are qualified as occupiers only. Women are disqualified by their sex for being registered as parliamentary electors, but unmarried women are not disqualified for being enrolled in the local government register, and even married women may be enrolled as parochial electors. See s. 43, *ante*.

As to statutory disqualifications for voting, see note (*m*) to s. 9 of the Municipal Corporations Act, 1882, *ante*, p. 17.

The parochial electors of a rural parish are defined by s. 2 (1) of this Act as the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish. The fact that a person's name is on the list of freemen for a parliamentary borough does not entitle him to be entered in the register of parochial electors of any parish, because the names of the freemen are not entered in the parliamentary register under the heading of any parish. *Hart* v. *Beard*, [1896] 1 Q. B. 54; 65 L. J. Q. B. 157; 73 L. T. 535; 44 W. R. 154; 1 Smith, 9; 12 T. L. R. 95.

It is the duty of the revising barrister to revise the parochial electors list and claims made in respect of that list. *Reg.* v. *Nash*, [1900] 1 Q. B. 103; 69 L. J. Q. B. 77; 81 L. T. 489; 48 W. R. 188; 64 J. P. 104; 1 Smith, 217; 16 T L. R. 17.

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Supplemental provisions as to overseers.

50. If, in the case of a rural parish or of any urban parish in respect to which the power of appointing overseers has been transferred under this Act, notice in the prescribed form of the appointment of overseers is not received by the guardians of the poor law union comprising the parish within three weeks after the fifteenth day of April, or after the occurrence of a vacancy in the office of overseer, as the case may be, the guardians shall make the appointment or fill the vacancy, and any overseer appointed by the guardians shall supersede any overseer previously appointed whose appointment has not been notified. Any such notice shall be admissible as evidence that the appointment has been duly made.

The power of appointing overseers may be conferred upon the council of a borough by an order made under s. 33, *ante*. The form of notice is prescribed by order of the Local Government Board. See s. 75 (2), *post*.

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Parish and District Councils.

* * * * *

53.—(1.)* * * * *

(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

Part IV. Section 53.

(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

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The adoptive Acts are those mentioned in s. 7, *ante*.

As to the appointment of a joint committee for the purposes of this section, see s. 57, *post*. As to a joint committee appointed for the purposes of the Burial Acts, see 60 & 61 Vict. c. 40.

As to the transfer of property, debts, and liabilities, see s. 67, *post*.

Effect on parish council of constitution of urban district.

54.—(1.) Where a new borough is created, or any other new urban district is constituted, or the area of an urban district is extended, then—

(a) as respects any rural parish or part of a rural parish which will be comprised in the borough or urban district, provision shall be made, either by the constitution of a new parish, or by the annexation of the parish or parts thereof to another parish or parishes, or otherwise, for the appointment of overseers and for placing the parish or part in the same position as other parishes in the borough or district, and

(b) as respects any parish or part which remains rural, provision shall be made for the constitution of a new parish council for the same, or for the annexation of the parish or part to some other parish or parishes, or otherwise for the government of the parish or part, and

(c) provision shall also where necessary be made for the adjustment of any property, debts and liabilities affected by the said creation, constitution, or extension.

(2.) The provision aforesaid shall be made—

(a) Where a new borough is created, by a scheme under section two hundred and thirteen of the Municipal Corporations Act, 1882; 45 & 46 Vict. c. 50.

(b) Where any other new urban district is constituted by an order of the county council under section fifty-seven of the Local Government Act, 1888; 51 & 52 Vict. c. 41.

(c) Where the area of an urban district is extended by an order of the Local Government Board under section fifty-four, or of the county council under section fifty-seven, as the case may be, of the Local Government Act, 1888.

(3.) Where the area of an urban district is diminished this section shall apply with the necessary modifications.

A new borough may be created by charter in the manner prescribed by s. 213 of the Municipal Corporations Act, 1882, *ante*, p. 144. The boundary of a borough may be altered by an order of the Local Government Board made under s. 54 of the Local

Government Act, 1888, *ante*, p. 437. As to the adjustment of property, etc., see the note to s. 68, *post*.

Part IV. Section 54.

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Joint committees.

57.—(1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district.

(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

The expression "district council" includes the council of a borough. See s. 21 (3), *ante*. As to the audit of the accounts of a joint committee appointed by a borough council and another council, see s. 58 (2), *post*. As to the imposition of conditions or restrictions on the powers of the joint committee, see *Reg.* v. *North Riding County Council*, [1899] 1 Q. B. 201; 68 L. J. Q. B. 93; 79 L. T. 521; 47 W. R. 205; 63 J. P. 68; 15 T. L. R. 31. A joint committee may be appointed for the purposes of any of the adoptive Acts under s. 53 (2), *ante*.

The appointment of a joint committee under this section can only be of a temporary nature. No power is given by this Act to make a permanent arrangement such as can be made under the Public Health Act, 1875, by the formation of a united district in the manner provided by s. 279 of that Act.

Audit of accounts of district and parish councils and inspection.

58.—(1.) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

(2.) The said accounts shall, except in the case of accounts audited by the auditors of a borough, (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council,) be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly.

Part IV. Section 58.

(3.) The Local Government Board may, with respect to any audit to which this section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor.

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The municipal accounts of the treasurer of a borough, and those of the borough council acting as an urban authority under the Public Health Acts, are audited by the borough auditors. See s. 27 of the Municipal Corporations Act, 1882, and the note thereto, *ante*, p. 42. As to the audit by district auditors of the accounts of an urban authority other than a town council, see s. 247 of the Public Health Act, 1875 (38 & 39 Vict. c. 55).

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Miscellaneous.

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Place of meeting of parish or district council or board of guardians.

61. No parish meeting or meeting of a parish council, or of a district council, or of a board of guardians shall be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

"District council" includes the council of a borough. Section 21 (3), *ante*.

Permissive transfer to urban district council of powers of other authorities.

62.—(1.) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

(2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

For the "adoptive Acts" see s. 7, *ante*. As to the transfer of property, debts, and liabilities in consequence of a resolution under this section, see s. 67, *post*.

Where the powers and duties of a burial board have been transferred to an urban district council under this section, the expenses of carrying the Burial Acts into execution continue to be payable out of the poor rate. *R.* v. *Connah's Quay Overseers*, [1901] 2 K. B. 174; 70 L. J. K. B. 651; 84 L. T. 601; 49 W. R. 463; 65 J. P. 500.

As to the power to adopt any of the adoptive Acts in a borough, see the note to s. 7, *ante*.

A county borough is an urban district within the meaning of this section. *Kirkdale Burial Board* v. *Liverpool Corporation*, *ante*, p. 554.

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Power to act through district council.

64. A county council may employ a district council as their agents in the transaction of any administrative business on matters arising in, or affecting the interests of, its own district.

Saving for harbour powers.

65. Where any improvement commission affected by this Act have any powers, duties, property, debts, or liabilities in respect of any harbour, the improvement commission shall continue to exist and be elected for the purpose thereof, and shall continue as a separate body, as if this Act had not passed, and the property, debts, and liabilities shall be apportioned between the district council for the district and the

commission so continuing, and the adjustment arising out of the apportionment shall be determined in manner provided by this Act.

As to the adjustment of property and liabilities, see s. 68, *post*.

66. Nothing in this Act shall affect the trusteeship, management, or control of any elementary school. Saving for elementary schools.

The expression "elementary school" is defined in s. 75 (2), *post*. This section was held not to preclude a parish council from appointing trustees under s. 14, *ante*, of a fund devoted to the support of a national school. *Re Spendluffe's Charity*, (1900) 83 L. T. 498; 65 J. P. 72; 17 T. L. R. 62.

67. Where any powers and duties are transferred by this Act from one authority to another authority— Transfer of property and debts and liabilities.

(1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and

(2.) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and

(3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

This section applies to the transfer of certain powers of the justices under s. 27, *ante*. It has also been held to apply to cases in which powers and duties have been transferred by a resolution under s. 62, *ante*. See *R.* v. *Connah's Quay Overseers*, cited in the note to that section.

68.—(1.) Where any adjustment is required for the purpose of this Act, or of any order or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement. Adjustment of property and liabilities.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board: Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in

Part IV. Section 68.

52 & 53 Vict. c. 49.

accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Where a new borough is created, provision may be made by a scheme under s. 213 of the Municipal Corporations Act, 1882, for the adjustment of property, debts, and liabilities affected. See s. 54, *ante*. If the adjustment is not made by the scheme it may be made in the manner provided by this section. See *Re Llanwonno School Board and Ystradyfodwg School Board*, (1898) 62 J. P. 644; 14 T. L. R. 432.

Where part of the area of a union was transferred to another union, it was held that the adjustment must be made between the two unions, and not between the transferred area and the union from which it was transferred. *Re Rochdale Union and Haslingden Union*, [1899] 1 Q. B. 540; 68 L. J. Q. B. 531; 80 L. T. 146; 47 W. R. 322; 15 T. L. R. 223. The fact that an agreement has been made for the adjustment of certain claims does not preclude a subsequent adjustment of other matters. *Re St. Thomas Rural District Council and Heavitree Urban District Council*, (1902) 86 L. T. 153; 66 J. P. 597.

The loss of a rateable area in consequence of an order is not a matter for adjustment under this section. *Caterham Urban District Council* v. *Godstone Rural District Council*, *ante*, p. 442, overruling on this point *Re Rochdale Union and Haslingden Union*, *supra*. As to such adjustment reference may also be made to the cases cited in the notes to ss. 32, 59 (4), and 62 of the Local Government Act, 1888, *ante*.

Where a parish in a rural district had been constituted a separate urban district, an agreement was made between the councils of the two districts by which the claims made by them against each other, which included a claim for compensation for loss of rateable area, were compromised. This agreement was made before the decision of the House of Lords in the Caterham case and in the belief that loss of rateable area was a matter for adjustment under this section. The urban district council subsequently brought an action to set aside the agreement on the ground that it was *ultra vires*; but it was held that as the claim for compensation had been made *bonâ fide*, the fact that it afterwards proved to be unfounded in law was no ground for setting aside the compromise. *Holsworthy Urban District Council* v. *Holsworthy Rural District Council*, [1907] 2 Ch. 62; 76 L. J. Ch. 389; 97 L. T. 634; 71 J. P. 330; 5 L. G. R. 791; 23 T. L. R. 452.

Power to deal with matters arising out of alteration of boundaries.

69. Where an alteration of any area is made by this Act, an order for any of the matters mentioned in section fifty-nine of the Local Government Act, 1888, may, if it appears to the county council desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, but nothing

in this section shall empower a county council or joint committee to alter the boundaries of a county.

Part IV. Section 69.

70.—(1.) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, on in the chairman and overseers of a rural parish, or in a district council, that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of Court, may be directed by the Court; and the Court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

Summary proceeding for determination of questions as to transfer of powers.

(2.) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891.

(3.) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

A rule of the Supreme Court made under sub-s. (1) of this section and dated the 10th December, 1894, provides that the question is to be submitted in the form of a special case which is to be settled in default of agreement by an arbitrator or by a judge in chambers, and is to be put into the Crown paper for argument. See the Annual Practice, 1910, vol. ii. p. 754.

With regard to appeals to the High Court from orders made by the Charity Commissioners, the Charitable Trusts Acts require that twenty-one days' notice of appeal must be given to the Commissioners and to the Attorney-General, and that the appeal must be brought within three months after the definitive publication of the order appealed against. The appellant may be required to give security for costs. See 23 & 24 Vict. c. 136, s. 8; 32 & 33 Vict. c. 110, s. 11. As to what constitutes a determination by the Commissioners, see *Attorney-General* v. *Hughes*, (1900) 81 L. T. 679.

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73. When the day on which any thing is required by or in pursuance of this Act to be done is Sunday, Christmas Day, or Good Friday, or a bank holiday, that thing shall be done on the next following day, not being one of the days above mentioned.

Provision as to Sundays and bank holidays.

* * * * *

75.—(1.) The definition of "parish" in section one hundred of the Local Government Act, 1888, shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

Construction of Act. 51 & 52 Vict. c. 41.

Part IV. Section 75.

In this Act the expression " parish " has the meaning which is given to it by s. 5 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), *ante*, p. 477, viz., a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed. Under s. 100 of the Local Government Act, 1888, *ante*, p. 453, where a parish was situate partly within and partly without a county, borough, urban district, or other area, each part constituted a separate parish. The Act of 1894, however, requires that in such cases orders are to be made for the purpose of providing that the whole of each parish shall be within the same county and within the same county district. See s. 36, *ante*. Definitions of other expressions which are used both in this Act and in the Local Government Act, 1888, will be found in s. 100 of that Act, *ante*, p. 452. It is to be observed that the definition of " county " in sub-s. (2) of this section includes a county borough.

(2.) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression " parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

The parochial electors of a rural parish are the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish (section 44, *ante*).

The expression " election " includes both the nomination and the poll.

The expression " trustees " includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

The expression " ecclesiastical charity " includes a charity, the endowment whereof is held for some one or more of the following purposes :—

(a) for any spiritual purpose which is a legal purpose ; or

(b) for the benefit of any spiritual person or ecclesiastical officer as such ; or

(c) for use, if a building, as a church, chapel, mission room, or Sunday School, or otherwise by any particular church or denomination ; or

(d) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein ; or

(e) otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act ; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within

forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

A charity the benefit of which was directed to be given to six poor widows of the parish, with preference to those who were most constant in their attendance on the public service of the Church, was held not to be an ecclesiastical charity. But where the deed of endowment required that the beneficiaries should have regularly attended divine service in the parish church and have been partakers of the Holy Communion, it was held that the charity was an ecclesiastical charity within the meaning of this section. *Re Perry Almshouses; Re Ross' Charity*, [1899] 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52; 15 T. L. R. 42.

The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

The expression "vestry" in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

The expression "rateable value" means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression "county" includes a county borough, and the expression "county council" includes the council of a county borough.

The expression "elementary school" means an elementary school within the meaning of the Elementary Education Act, 1870. 33 & 34 Vict. c. 75.

The expression "elementary school" is defined by s. 3 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), as "a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week."

Section 1 of the Education Code (1890) Act, 1890 (53 & 54 Vict. c. 22), provides that the first part of this definition is not to apply to evening schools.

The expression "local and personal Act" includes a Provisional Order confirmed by an Act and the Act confirming the Order.

As to the meaning of this expression, see *Reg.* v. *London County Council*, [1893] 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1; 58 J. P. 21; 9 T. L. R. 601.

The expression "prescribed" means prescribed by order of the Local Government Board.

76. This Act shall not extend to Scotland or Ireland. Extent of Act.

77. This Act may be cited as the Local Government Act, 1894. Short title.

Part V. Section 81.

PART V.

TRANSITORY PROVISIONS.

* * * * *

Existing officers.

81.—(1.) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purposes of this section the body appointing a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body.

* * * * *

(4.) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

* * * * *

(6.) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

An assistant overseer might formerly have been appointed by a board of guardians under 7 & 8 Vict. c. 101 s. 61, which is in part repealed by s. 89, *post*.

51 & 52 Vict. c. 41.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council or board of guardians or other authority whose officer the person affected is when the claim for compensation arises, as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the offices affected.

See s. 120 of the Local Government Act, 1888, *ante*, p. 457.

* * * * *

84. * * * * *

Appointed day.

(4.) Subject as in this Act mentioned, "the appointed day" shall,

* * * * *

(c) for the purpose of powers, duties, and liabilities transferred to a council of a borough by this Act, be the first day of November next after the passing of this Act;

* * * * *

Sections 85—88 are printed in the note to r. (8) of the Second Schedule to the Education Act, 1902 (2 Edw. 7, c. 42), *post*, p. 616.

Part V. Section 89. Repeal.

89. The Acts specified in the Second Schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of that schedule mentioned, and so much of any Act, whether public general or local and personal, as is inconsistent with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be alterable in like manner as if they had been fixed by an order of the county council under this or any other Act.

SCHEDULES.

* * * * *

THE REGISTRATION ORDER, 1895.

WHEREAS by "The Local Government Act, 1888," it is enacted that it shall be lawful for Her Majesty the Queen, by Order in Council, from time to time to alter the instructions, precepts, notices, and forms under the Registration of Electors Acts, in such manner as appears to Her Majesty necessary for carrying into effect the said Act and the County Electors Act, 1888, and any other Act for the time being in force amending or affecting the Acts above mentioned:

And whereas it appears necessary to Her Majesty for the aforesaid purpose that the instructions, precepts, notices, and forms under the Registration of Electors Acts should be altered in manner provided by this Order:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority committed to Her by the said Local Government Act, 1888, and of all other powers enabling Her on that behalf, doth declare it, and it is hereby declared, to be necessary for carrying into effect the Local Government Act, 1888, and the County Electors Act, 1888, and the other Acts in force amending or affecting the said Acts, or the Registration of Electors Acts, that the instructions, precepts, notices, and forms under the said Registration of Electors Acts should be altered in manner appearing by the three schedules to this Order and so that the instructions, precepts, notices, and forms set forth in the three schedules to this Order should be the instructions, precepts, notices, and forms under the Registration of Electors Acts.

And it is hereby ordered that the former instructions, precepts, notices, and forms shall be altered accordingly, and that the instructions, precepts, notices, and forms in the schedules to this Order shall be observed and be valid in law.

This Order may be cited as "The Registration Order, 1895."

See s. 76 (7) of the Local Government Act, 1888 (51 & 52 Vict. c. 41).

As to the forms which were formerly in use, see the note to 6 & 7 Vict. c. 18, s. 10, *ante*, p. 217.

A disregard of the precise wording or arrangement of the forms in the schedules is immaterial so long as the forms are substantially complied with. *Linforth* v. *Butler*, [1899] 1 Q. B. 116; 68 L. J. Q. B. 3; 79 L. T. 498; 47 W. R. 141; 1 Smith, 162; 15 T. L. R. 34.

Only so much of the Third Schedule as relates to the registration of burgesses is here set out.

SCHEDULES.

* * * * *

THIRD SCHEDULE.

OCCUPATION ELECTORS.

* * * * *

FORM OF PRECEPT TO THE OVERSEERS OF A PARISH IN A PARLIAMENTARY BOROUGH.*

REGISTRATION OF OCCUPATION ELECTORS.

Parliamentary borough of / Municipal borough of } To the overseers of the poor* of the parish [*or* township] of

In pursuance of the provisions of the Acts of Parliament in that behalf I require your attention to the following :—

INSTRUCTIONS.

Part I. of this precept informs you generally of the persons entitled to be registered, and of the meaning of the expressions used in this precept, and also as to the mode in which you are to make out and publish the lists.

Part II. gives you, in order of time, the several matters which you are required to do.

You will receive a separate precept from the clerk of the county council with respect to the registration of ownership electors.

PART I.

GENERAL INSTRUCTIONS, EXPLAINING THE PERSONS ENTITLED TO BE REGISTERED, THE MEANING OF THE EXPRESSIONS USED, AND THE MODE OF MAKING OUT AND PUBLISHING THE LISTS.

Definitions.

1.—(i.) This precept relates to the registration of occupation electors within the said parliamentary borough and municipal borough.

(ii.) Occupation electors may be parliamentary electors or burgesses.

2. In this precept the expression "electors" includes voters and burgesses, and the expression "registration" includes enrolment.

* * * * *

8. In this precept the expression "burgesses" means persons entitled to be enrolled as burgesses in respect of the old burgess qualification, or of the ten pounds occupation burgess qualification.

9. A person entitled to be enrolled as a burgess may be a man or woman, but must be of full age and not subject to any legal incapacity, and must in all other respects be duly qualified to be enrolled as a burgess, and must not at any time within the twelve months next before the fifteenth day of July next have received any union or parochial relief or other alms; but where a person has received for himself or herself, or for any member of his or her family, any medical or surgical assistance, or any medicine, at the expense of any poor rate, he or she is not thereby deprived of his or her right to be enrolled, and medical or surgical assistance includes all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the medical officer of the union or parish at the expense of any poor rate.

* In cases where there is a registration officer, "registration officer" must be substituted throughout for "overseers" and "overseer of the poor."

Schedule 3.

10.—(i.) A person entitled to be enrolled as a burgess in respect of the old burgess qualification—

(a) must on the fifteenth day of July next be, and during the whole of the twelve months immediately preceding that day have been, an occupier of a house, warehouse, counting-house, shop, or other building in your parish [*or* township]; and

(b) have resided during those twelve months in the said municipal borough or within * seven miles thereof; and

(c) such person or some one else must during the said twelve months have been rated to all poor rates made in respect of the qualifying property; and

(d) all sums due in respect of the qualifying property on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January last, must have been paid on or before the twentieth day of July next.

If the borough or county rate is levied separately from the poor rate, insert after the word "allowed" the words "or any borough [*or* county] rate made."

(ii.) A person is entitled to be enrolled as a burgess under the old burgess qualification notwithstanding that he has permitted his dwelling-house to be occupied as a furnished house by some other person for a time not exceeding four months, and during that time has not resided as above mentioned.

(iii.) If two or more persons are joint occupiers, each such occupier is entitled to be enrolled as a burgess.

11.—(i.) A person entitled to be enrolled as a burgess in respect of the ten pounds occupation burgess qualification—

(a) must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in your parish [*or* township] of the clear yearly value of not less than ten pounds; and

(b) must have resided in or within* seven miles of the said municipal borough during six months immediately preceding the fifteenth day of July next; and

(c) such person, or some one else, must during the said twelve months have been rated to all poor rates made in respect of such land or tenement; and

(d) all sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January last, or on account of any assessed taxes due before the fifth day of January last, must have been paid on or before the twentieth day of July next.

(ii.) If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be enrolled as a burgess.

12.—(i.) Parochial electors consist of parliamentary electors and burgesses, but for the purpose of elections under the Local Government Act, 1894, *i.e.*, elections of† parish councils, guardians, and district councils not being borough councils, a woman is not disqualified by marriage for being on the register of electors, but a husband and wife cannot be qualified in respect of the same property.

(ii.) If a person has occupied in immediate succession during the twelve months immediately preceding the fifteenth day of July different premises in the municipal borough which would qualify him for enrolment as a burgess, he is entitled, in respect of the occupation thereof, to be enrolled as a burgess in the parish [*or* township] in which the last occupied premises are situate.

(iii.) A person is not disqualified from being registered in respect of any qualification mentioned in this schedule by reason only that during part of the twelve months ending on the fifteenth day of July, not exceeding four months at any one time, he has, in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, been absent from his dwelling-house or lodgings, or not resided in or within the required distance from the borough.

13. A person who is entitled to be enrolled as a burgess in all respects except that

* If the parish is in the administrative county of London, substitute fifteen for seven.

† If the parish is in London omit "parish councils and district councils" and insert "vestries and parish auditors."

of residence, and is resident beyond seven miles, but within fifteen miles, of the said municipal borough, is entitled to be on the non-resident list of persons entitled to be elected aldermen or councillors though not entitled to be on the burgess roll.

If the parish is within the administrative county of London, this paragraph should be omitted.

14.—(i.) Each list and, where the list is made out in divisions, each division of each list must be made out in alphabetical order.

(ii.) If your parish [*or* township] is divided into, or forms part of, more than one voting area, that is to say, any polling district, electoral division, borough, county district, ward, or other area for which is held a separate election at which the register of electors is used, you must make out a list for each part which is in a separate voting area, as if it were a separate parish.

Note.—If the local authority has given any special directions as to the mode of making out the list according to streets or otherwise, the town clerk, or other officer issuing the precept, must modify paragraph (14) accordingly.

15. In making out the lists you are to state the surname and other name or names of each person at full length, the surname being placed first.

16. The place of abode should be entered with the name, if any, of the street, lane, or other locality, and the number, if any, in such street, lane, or other locality, and such entry should be made in all cases in such a manner as will afford a full and sufficient address for a person entered if a letter is addressed to him by post.

17.—(i.) The nature of the qualification should be entered as nearly as possible in accordance with the words of the statute conferring the franchise; for instance:—

(a) The nature of the ten pounds occupation qualification of a person should be stated thus:—"tenement" or "land," or "land and tenement," or in case of a joint occupation "tenement (joint)," or "land (joint)" or in the case of a successive occupation "tenement (successive)" or "land (successive)."

(b) The nature of a household qualification should be stated thus, "dwelling-house," or in the case of successive occupation, "dwelling-house (successive)."

(c) The nature of the old burgess qualification should be stated thus, "house," "warehouse," "counting-house," "chambers," or as the case may be, with the addition of "joint" or "successive" if necessary.

(ii.) Where the same property constitutes both a ten pounds occupation qualification and also the old burgess qualification, the nature of the qualification should be stated by a description of the tenement thus, "house," "shop," "warehouse," or "building," or "chambers," or as the case may be, or in the case of a joint occupation, "house (joint)," "shop (joint)," "warehouse (joint)," or as the case may be, or in the case of a successive occupation, "shop (successive)," or as the case may be.

(iii.) Where the same property constitutes both a ten pounds occupation qualification, or the old burgess qualification, and also a household qualification, the nature of the qualification should be entered as "dwelling-house."

(iv.) If the description indicates the nature of the qualification, as, for instance, if a ten pounds occupation qualification consists of a house and is entered as a dwelling-house, such description will be sufficient.

(v.) Any description of the nature of the qualification further than that above mentioned is superfluous, and should not be given.

18. The description of any qualifying property should specify the name and situation of that property, and for that purpose should either state the name (if any) of the street, lane, or other locality, and the number (if any) in such street, lane, or other locality of such property, or the name of the occupying tenant, and the description of the qualifying property should in all cases be such as will afford full and sufficient means of identifying such property.

19. Where several qualifications are possessed by the same person, the particulars respecting each qualification should be stated in the list; and in the case of a list made out in divisions, where a person is entered in division one in respect of one qualification for parliamentary purposes and in respect of another qualification for municipal purposes, each such qualification should be distinguished in the list by a note to the effect that the qualification is for parliamentary purposes only, or for municipal purposes only, as the case may be.

Schedule 3.

20. The occupiers list (mentioned hereafter in paragraph thirty-five, sub-paragraph (a)) is to be made in three divisions:

Division one is to comprise the names of the persons entitled both to be registered as parliamentary electors in respect of a ten pounds occupation or household qualification, and to be enrolled as burgesses.

Division two is to comprise the names of the persons entitled to be registered as parliamentary electors in respect of a ten pounds occupation or household qualification, but not to be enrolled as burgesses.

Division three is to comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary electors in respect of a ten pounds occupation or household qualification.

21. You should omit from any list of parliamentary electors (other than the old lodgers list) and from any list of burgesses and from the non-resident list mentioned in sub-paragraph (c) of paragraph thirty-five, the name of any person—

(a) whom from the returns furnished by the registrar of births and deaths, or from your own knowledge, you know to be dead; or

(b) who is not qualified by reason of the non-payment of rates; or

(c) who is disqualified by reason of having received parochial relief; or

(d) †whose name is entered in the corrupt and illegal practices list.†

Omit (d) where there is no corrupt and illegal practices list.

* * * * *

23. The registrars of births and deaths are required to send to you, periodically, returns of the names and residences of all male persons of full age dying within your parish [*or* township], and also as and when required by you of the names and residences of all women of full age dying within your parish [*or* township], and you must examine those returns to see whether any person who otherwise would appear in the list of electors is dead, and you are to pay the registrar, as part of your expenses connected with registration, a fee of twopence for each return, and a further fee of twopence for every death entered in such returns.

Publication and Inspection.

24.—(i.) The manner in which you are required to publish the notices, lists, and documents directed by this precept to be published is as follows; that is to say—

(ii.) You are to fix a copy of such notice, list, or document (each copy being first signed by you)—

(a) on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish [*or* township], including chapels which do not belong to the Established Church; and

(b) also, having first obtained the authority of the local postmaster, or if he refuses, of the Postmaster-General, in some public and conspicuous position in or near every post office and telegraph office occupied by or on behalf of the Postmaster-General; and

(c) also in or near every public or municipal or parochial office in your parish [*or* township]; or

(d) if there is no such church, chapel, or office, then in some public or conspicuous situation in your parish [*or* township].

25. Everything so published must remain there during a period including two consecutive Sundays at least next after the first day of publication, and if you find any notice, list, or other document published by you in pursuance of this precept to be destroyed, mutilated, defaced, or removed, you are forthwith to place another to the same effect in its place.

26. Where this precept directs you during any period to allow any list, notice, or other document to be open to public inspection and to deliver copies thereof, you will permit such list, notice, or document to be perused by every person desirous of perusing it, at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday, during the said period, without payment or demand of any fee; and you are also to deliver a written or printed

copy of it, signed by you, to every person applying for the same during the said period, on payment of a price for such copy after the following rate :— Schedule 3.

For any list or copy of a list containing any number of persons' names—

	s.	d.
Not exceeding 100 names	0	6
Exceeding 100 and not exceeding 200	1	0
Exceeding 200 and not exceeding 300	1	6
Exceeding 300 and not exceeding 400	2	0
Exceeding 400	2	6

27. You must allow any person who is registered as a parliamentary elector in the said parliamentary borough, or enrolled as a burgess in the said municipal borough, to inspect at all reasonable times, free of charge,—

(a) the books containing the poor rates made for your parish [*or* township] within the last two years, and to make a copy of, or take an extract from, such books, and

(b) the returns of deaths sent to you by the registrars of births and deaths.

PART II.

THINGS TO BE DONE IN ORDER OF DATE.

* * * * *

31. On or before the twentieth day of June next you are to publish in manner directed by paragraph twenty-four of this precept a notice signed by you according to the Form B among the printed forms sent herewith.

32.—(i.) Where any sum on account of a poor rate made and allowed during the twelve months next before the fifth day of January last is on the first day of June next due in respect of any property in your parish [*or* township] capable of conferring the parliamentary or municipal franchise in respect of the occupation of said property otherwise than as a lodger, you are on or before the twentieth day of June next to give to every occupier of that property a notice (in the Form C (No. 1) sent herewith), by delivering it to such occupier, or leaving it at his last or usual place of abode, or with some person on the property in respect of which the rate is payable, and in case no such person can be found, then by affixing the notice upon some conspicuous part of such property.

(ii.) You need not give this notice if the rate has been previously duly demanded of such occupier by a demand note served in the like manner as the last-mentioned notice, but you must serve the notice on every occupier of that property who will, if the rate is paid, be entitled to be registered as an elector in respect of the occupation thereof.

(iii.) Where any sum on account of borough rate made during the twelve months next before the fifth day of January last is on the first day of June next due in respect of any property in your parish [*or* township] capable of conferring the municipal franchise in respect of the old burgess qualification, the notice must further state that omission to pay the borough rate will disqualify from enrolment as a burgess in respect of the old burgess qualification.

If the borough [or county] rate is levied as a part of the poor rate, the paragraph relating to the borough [or county] rate should be omitted.

33.—(i.) If the sum due on account of poor rate as above mentioned in respect of any property is not paid on or before the twentieth day of July next, all occupiers of that property are disqualified from being entered in the occupiers list of electors ; and if any sum due on account of borough rate as above mentioned in respect of any property is not paid on or before the twentieth day of July next, all occupiers of that property are disqualified from being entered in any list of burgesses in respect of the old burgess qualification.

If the borough [or county] rate is levied as a part of the poor rate, the part of the paragraph relating to the borough [or county] rate should be omitted.

Schedule 3.

(ii.) On or before the twenty-second day of July next you are to make out (in the Form C (No. 2) sent herewith) a list containing the name of every person so disqualified; and you are to keep that list, and during the first fourteen days after the said twenty-second day of July are to allow it to be open to public inspection, and to deliver copies thereof in accordance with paragraph twenty-six of this precept.

34. On or before the last day of July next you are to ascertain from the relieving officer acting for your parish [*or* township] the names of all persons who are disqualified from being inserted in the lists of occupation electors for your parish [*or* township] by reason of having received parochial relief, and the relieving officer upon your application is bound to produce to you at such place in your parish [*or* township] and at such times as are required by you the books in his possession containing the names of such persons.

Lists of Electors.

35. On or before the last day of July next you are to make out in manner directed by paragraphs fourteen to twenty-two of this precept the following lists of electors:—

(a) The occupiers list, that is to say, a list (in the Form D (No. 1) sent herewith) of all persons who by reason of the occupation of property situate wholly or partly within your parish [*or* township] are entitled to be registered as parliamentary electors in respect of a ten pounds occupation or a household qualification as defined in paragraphs five and six of this precept, or to be enrolled as burgesses of the said municipal borough;

* * * * *

(c) The non-resident list, that is to say, a list (in the Form G sent herewith) of all persons who are entitled in respect of the occupation of property within your parish [*or* township], to be elected aldermen or councillors of the said municipal borough, but are not entitled to be on the burgess roll thereof.

36. On or before the first day of August next you are to sign the above-mentioned lists, and to cause a sufficient number of copies of such lists to be written or printed, and to publish the lists signed by you in your parish [*or* township] in manner directed by paragraph twenty-four of this precept.

37. *You are also to publish at the same time and in the same manner the corrupt and illegal practices list which is sent herewith.

38. You are also to cause a sufficient number of the above lists to be written or printed and to keep a written or printed copy of each of the above lists, and during the first fourteen days after the publication of them are to allow them to be open to public inspection, and to deliver copies thereof in accordance with paragraph twenty-six of this precept.

39. You are also to keep the list of defaulters in the payment of assessed taxes sent to you by the collector of taxes, and allow it during the first fourteen days after the first publication of the lists of voters to be open for public inspection in manner directed by paragraph twenty-six of this precept.

Claims and Objections.

40. On or before the twenty-fifth day of August next you are to make out (in accordance with paragraphs fourteen to twenty-two of this precept, and according to the Form K sent herewith) claim lists, that is to say, lists containing the name of every person who has given or caused to be given to you, or any one of you, on or before the twentieth day of August next, notice of his claim to have his name inserted in any list of electors for your parish [*or* township], making separate lists of—

(a) persons claiming insertion both among the parliamentary electors for the said parliamentary borough and the burgesses for the said municipal borough:

(b) persons claiming insertion in a list of parliamentary electors only, but otherwise than as freemen or lodgers;

* If there is no corrupt and illegal practices list, the paragraph relating to it must be omitted.

(c) persons claiming insertion in a list of parliamentary electors as lodgers, but not comprised in the old lodgers list;
(d) persons claiming insertion in the list of burgesses only;
(e) persons claiming insertion in the parochial electors list;
(f) persons claiming insertion in the non-resident list; and
(g) persons claiming to have their names omitted from the corrupt and illegal practices list.*

41. On or before the twenty-fifth day of August next you are also to make out (in accordance with paragraphs fourteen to twenty-two of this precept, and according to the Form L sent herewith) objection lists, that is to say, lists containing the name of every person against whom a notice of objection has been given to you, or any of you, on or before the twentieth day of August next, as not being entitled to have his name retained in a list of electors for your parish [*or* township], giving in separate lists the objections made to—

(a) any person on the occupiers list both as a parliamentary elector and a burgess;
(b) any person on the occupiers list as a parliamentary elector only;
(c) any person on the old lodgers list;
(d) any person on any list as a burgess only;
(e) any person on the non-resident list; and
(f) any person on the ground that he is omitted from the corrupt and illegal practices list.†

42. On or before the twenty-fifth day of August next you are to sign each of the claim and objection lists, and to publish it in the manner directed by paragraph twenty-four of the precept.

43. You are to cause a sufficient number of the claim and objection lists signed by you to be written or printed, and are to keep a copy of each of such lists, and during the fourteen days next after the twenty-fifth day of August are to allow such copies and also the original notices of claims and objections to be open to public inspection, and to deliver copies thereof in accordance with paragraph twenty-six of this precept.

44. On or before the twenty-fifth day of August next you are to deliver to me—

(a) two copies of the lists made out under paragraph thirty-five of this precept; and
(b) a copy of each of the claim and objection lists made out and signed by you under paragraphs forty to forty-two of this precept.

If the parish is not in a municipal borough, insert after the words "deliver to me" the words "and to the clerk of the county council of your administrative county."

45. You are to attend the court to be holden by the revising barrister for the revision of the lists of electors for your parish [*or* township]; and notice will be sent you of the time and place of holding such court.

46. You are at such court to deliver to the barrister holding it the following documents:—

(a) the several lists made out and signed by you; and
(b) the original notices of claims and of objections given to you; and you are there to produce the rate books of your parish [*or* township] containing the poor rates made and allowed during the period between the fifth day of January in last year and the fifteenth day of July next.

If you fail to comply with this precept you will be liable to the penalties in that case provided.

Dated the day of 18 .

(Signed) *A.B.*,
Town clerk of the municipal borough of .

If the officer issuing the precept is not the town clerk of a municipal borough, he should append to his signature his proper official description.

* Omit (g) if there is no corrupt and illegal practices list.
† Omit (f) if there is no corrupt and illegal practices list.

Schedule 3.

FORMS FOR OCCUPATION ELECTORS IN PARISH IN A PARLIAMENTARY BOROUGH.

* * * * *

FORM (B).

NOTICE as to Rates to be published by the OVERSEERS.

Parish [or *Township*] *of*

Parliamentary borough of } We hereby give notice that no person will be entitled to have his or her name inserted in any list of electors now about to be made in respect of the occupation of any premises situate wholly or partly within this parish [*or* township] otherwise than as lodgings, unless all sums which have become due in respect of those premises on account of any poor rate made and allowed during the twelve calendar months next preceding the fifth day of January last past have been duly paid on or before the twentieth day of July next; or to have his or her name inserted in any such list in respect of the occupation as a ten pounds occupier of any premises situate as aforesaid, unless also all assessed taxes due in respect of those premises previously to the fifth day of January last past have been duly paid on or before the twentieth day of July next.

Municipal borough of }

Dated the day of June 18 .

(Signed) *A.B.* } Overseers of the above
C.D. } parish [*or* township].

Where a borough [or county] rate is levied as a separate rate and not as part of the poor rate, the form should be altered accordingly, so as to distinguish the borough [or county] rate from the poor rate, and to state that omission to pay the borough [or county] rate will disqualify for enrolment as a burgess [or for registration as a county elector, as the case may be] in respect of the old burgess qualification as well as non-payment of the poor rate.

FORM (C).

No. 1.

NOTICE as to RATES to be served by OVERSEERS.

Parish [or *Township*] *of*

To *A.B.*

Parliamentary borough of
Municipal borough [*or* administrative county] of

Take notice that you will not be entitled to have your name inserted in the list of electors now about to be made as occupier of the premises in your occupation in [*street or place*], unless on or before the twentieth day of July next all sums due in respect of those premises on account of any poor rate made and allowed during the twelve calendar months next preceding the fifth day of January last, amounting to £ , are duly paid.

Dated the day of June 18 .

(Signed) *C.D.* } Overseers of the above parish [*or*
E.F. } township].

Where a borough [or county] rate is levied as a separate rate and not as part of the poor rate, the form should be altered accordingly, so as to distinguish the borough [or county] rate from the poor rate, and to state that omission to pay the borough [or county] rate

will disqualify for enrolment as a burgess [or for registration as a county elector, as the case may be] in respect of the old burgess qualification as well as non-payment of the poor rate.

No. 2.

FORM of LIST of NAMES of PERSONS disqualified for being registered by non-payment of the rates due in respect of the premises named herein.

Parish [*or* Township] of

Name of Person in full, Surname being placed first.	Place of Abode.	Premises.	Person actually Rated in respect of Premises.

FORM (D).

FORM of LISTS of OCCUPATION ELECTORS.

No. 1.—OCCUPIERS LIST.

Parish [*or* Township] of

LIST OF

The persons entitled to be registered as parliamentary electors for the parliamentary borough of and of the persons entitled to be enrolled as burgesses for the municipal borough [*or* registered as county electors for the administrative county] of in respect of the occupation of property situate wholly or partly within this parish [*or* township] otherwise than as lodgings.

N.B.—This list (No. 1) does not contain the names of any parliamentary electors except those entitled in respect of a ten pounds or household qualification.

Division 1. *Persons entitled, in respect of the occupation aforesaid, both to be Registered as Parliamentary Electors and to be enrolled as Burgesses* [or *Registered as County Electors*].

1 Names of Electors in full, Surname being first.	2 Place of Abode.	3 Nature of Qualification.	4 Description of Qualifying Property.

Division 2. *Persons entitled, in respect of the occupation aforesaid, to be Registered as Parliamentary Electors, but not to be enrolled as Burgesses* [or *Registered as County Electors*].

Names of Electors in full, Surname being first.	Place of Abode.	Nature of Qualification.	Description of Qualifying Property.

Schedule 3. *Division* 3. *Persons entitled, in respect of the occupation aforesaid, to be enrolled as Burgesses* [or *Registered as County Electors*], *but not to be Registered as Parliamentary Electors.*

Names of Electors in full, Surname being first.	Place of Abode.	Nature of Qualification.	Description of Qualifying Property.

(Signed) *A.B.* } Overseers of the parish [*or* township] of
C.D. }

* * * * *

FORM (G).

NON-RESIDENT LIST.

Parish [*or* Township] of

List of the persons who are entitled to be elected aldermen or councillors of the municipal borough [*or* administrative county] of in respect of the occupation within the above parish [*or* township] of any property, but who are not entitled to be on the burgess roll of that borough [*or* county register of that administrative county].

1 Names of Persons in full, Surname being first.	2 Place of Abode.	3 Nature of Qualification.	4 Description of Qualifying Property.

(Signed) *A.B.* } Overseers of the above
C.D. } parish [*or* township].

FORM (H).

NOTICE OF CLAIM (OCCUPATION ELECTORS).

No. 1.—PARLIAMENTARY AND LOCAL GOVERNMENT (OTHER THAN LODGERS).

To the overseers of the parish [*or* township] of

I claim to have my name inserted in the lists for your parish [*or* township] of the parliamentary electors for the parliamentary borough of and of burgesses for the municipal borough of [*or* to have my name entered in the parochial electors list for your parish [*or* township]] in respect of the qualification named below [and to have my name omitted from the corrupt and illegal practices list].

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Description of Qualifying Property.

(Signed) *A.B.*

Dated the day of 18 .

Note.—If the claim is to be registered as a parliamentary elector only or as a burgess [*or* county elector] only, or only to be entered in the parochial electors list, the form must be altered accordingly.

If the parish is not in a municipal borough substitute "county electors for the administrative county" for "burgesses for the municipal borough."

* * * * *

Schedule 3.

FORM (I).

FORM OF NOTICE OF OBJECTION.

No. 1.—NOTICE OF OBJECTION to be given to OVERSEERS.

To the overseers of the parish [*or* township] of

I hereby give you notice that I object to the name of being retained on [division of] the list of electors for your parish [*or* township] as a parliamentary elector for the parliamentary borough of and as a burgess for the municipal borough of [*or as one or the other*] [and to the omission of the said name from the corrupt and illegal practices list].

Dated the day of 18 .

(Signed) *A.B.* [*place of abode*]

on the list of parliamentary electors and burgesses, *or* county electors [*or on the one or the other*] for the parish [*or* township] of

If the parish is not in a municipal borough substitute "county electors" and "administrative county" for "burgess" and "municipal borough."

No. 2.—NOTICE OF OBJECTION to be given to PERSON objected to.

To *C.D.*

I hereby give you notice that I object to your name being retained on [division of] the list of electors for the parish [*or* township] of as a parliamentary elector for the parliamentary borough of and as a burgess for the municipal borough of [*or as one or the other*] [and to the omission of the said name from the corrupt and illegal practices list] on the following grounds, viz.:—

1. That [*e.g.*, you have not occupied for twelve months to July fifteenth].
2. That
3.

Dated the day of 18 .

(Signed) *A.B.*, of [*place of abode*], on the list of parliamentary electors and burgesses, *or* county electors [*or on one or the other*] for the parish [*or* township] of

If the parish is not in a municipal borough, substitute "county electors for the administrative county" for "burgesses for the municipal borough."

Note.—The notice of objection in each of the above two cases, Nos. 1 and 2, should, if there is more than one list, specify the list, and if the list referred to is made out in divisions, should specify the division, to which the objection refers; and if the list contains two or more persons of the same name, should distinguish the person intended to be objected to.

If the notice refers to division one of the occupiers list the reference to a burgess [*or* county elector] may be inserted, but if the notice refers to division two of the occupiers list or to the lodgers list, the reference to a burgess [*or* county elector] should be omitted, and if the notice refers to division three of the occupiers list, the reference to a parliamentary elector should be omitted.

If the objection is to a parliamentary elector, the objector must sign himself as being on the list of parliamentary electors; if the objection is to a burgess [*or* county elector] the objector must sign himself as being on the list of burgesses [*or* county electors]; and if the objection is to a person both as a parliamentary elector and as a burgess [*or* county elector], the objector must sign himself as being on the list as both.

Schedule 3.

FORM (K).

LIST OF CLAIMANTS in respect of the OCCUPATION FRANCHISE to be published by the OVERSEERS.

No. 1.—LIST OF OCCUPIER CLAIMANTS (PARLIAMENTARY AND LOCAL GOVERNMENT).

Parish [*or* Township] of

The following persons claim to have their names inserted in division one of the occupiers list of electors:—

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Description of Qualifying Property.

(Signed) *A.B.* } Overseers for the above
C.D. } parish [*or* township].

Note.—Form No. 1 applies to persons who claim to be entered in division one of the occupiers list, both as parliamentary electors and as burgesses [*or* county electors].

A copy of the claim must be entered in this form.

Any claim to be omitted from the corrupt and illegal practices list should be added to the foregoing list of claimants.

* * * * *

No. 4.—LIST OF CLAIMANTS (LOCAL GOVERNMENT).

Parish [*or* Township] of

The following persons claim to have their names inserted in division three of the occupiers list of electors in respect of the occupation of property in this parish [*or* township]:—

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Description of Qualifying Property.

(Signed) *A.B.* } Overseers of the above
C.D. } parish [*or* township].

Note.—Form No. 4 applies to persons who claim to be entered in division three of the occupiers list as burgesses [*or* county electors] only.

Any claim to be omitted from the corrupt and illegal practices list must be added to the above list.

A copy of the claim must be entered in this form.

* * * * *

Schedule 3.

FORM (L).

FORM of LIST of Persons Objected to to be published by the Overseers.

No. 1.—LIST OF PERSONS objected to (PARLIAMENTARY and LOCAL GOVERNMENT).

Parish [*or* Township] of

The following persons have been objected to as not being entitled to have their names retained on division one of the occupiers list of electors.

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Description of Qualifying Property.

(Signed) *A.B.* } Overseers of the above
C.D. } parish [*or* township].

Note.—This form applies only to persons objected to who appear in division one of the occupiers list, as entitled to vote both as parliamentary electors and as burgesses [*or* county electors].

In this form the particulars should be copied from the list of electors.

Any objection to the omission of a person from the corrupt and illegal practices list should be added to the foregoing list.

* * * * *

No. 4.—LIST OF PERSONS objected to (LOCAL GOVERNMENT).

Parish [*or* Township] of

The following persons have been objected to as not being entitled to have their names retained on division three of the occupiers list of electors in respect of the occupation of property in this parish [*or* township].

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Description of Qualifying Property.

(Signed) *A.B.* } Overseers of the above
C.D. } parish [*or* township].

Note.—This form applies only to objections to persons whose names appear in division three of the occupiers list as entitled to vote as burgesses [*or* as county electors] only.

In this form the particulars should be copied from the list of burgesses [*or* county electors].

Any objection to the omission of a person from the corrupt and illegal practices list should be added to the foregoing list.

FORM (M).

DECLARATION for correcting misdescription in List.

I, of No. in the parish of [*or* township] in the parliamentary borough of and in the municipal borough [*or* administrative county] of [*as the case may be*], do solemnly and sincerely declare as follows:—

Schedule 3.

1. I am the person referred to in division of of the occupiers list of electors [*or* in the list of (*specifying the particular list*)] made out for the parish [*or* township] of by an entry as follows:—

Name as described in List.	Place of Abode as described in List.	Nature of Qualification as described in List.	Description of Qualifying Property.
Brown, John	High-street	Shop	2, Shire-lane

2. My correct name and place of abode and the correct particulars respecting my qualifications are, and ought to be stated, for the purposes of the register of electors for as follows:—

Correct Name.	Correct Place of Abode.	Correct Nature of Qualification.	Correct Description of Qualifying Property.
Brown, Joseph	15, High-street	House	24, Shire-lane

Dated this day of 18 .

(Signed)

Made and subscribed before me this day of 18 .

A.B.

Justice of the peace for

Note.—This form must be adapted to suit the various lists.

The person before whom the declaration is made should affix his official description.

FORM (N).

NOTICE OF WITHDRAWAL OF OBJECTION.

No. 1.—NOTICE to the PERSON objected to.

To *A.B.*

I hereby give you notice that I withdraw my objection to your name being retained on [division of] the list of † so far as regards the ground of objection numbered in my notice to you of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.

Omit the words between crosses if the objection is wholly withdrawn. The notice should be signed in the manner prescribed for the notice of objection.

No. 2.—NOTICE to the TOWN CLERK.

To the Town Clerk of

I hereby give you notice that I withdraw my objection to the name of being retained on [division of] the list of † so far as regards the ground of objection numbered in my notice to him of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.

Omit the words between crosses if the objection is wholly withdrawn. The notice should be signed in the manner prescribed for the notice of objection.

Schedule 3.

FORM (O).

NOTICE REVIVING AN OBJECTION.

No. 1.—NOTICE to the PERSON objected to.

To *A.B.*

I hereby give you notice that I revive the objection which was made by , since deceased, to your name being retained on [division of] the list of † so far as regards the ground of objection numbered in the notice to you of such objection.†

Dated the day of 18 .

(Signed)

This list should be referred to in the manner prescribed for the notice of objection.
Omit the words between crosses if the objection is wholly revived.
The notice should be signed in the manner prescribed for the notice of objection.

No. 2.—NOTICE to the TOWN CLERK.

To the Town Clerk of

I hereby give you notice that I revive the objection which was made by , since deceased, to the name of being retained on [division of] the list of † so far as regards the ground of objection numbered in the notice to the person objected to of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.
Omit the words between crosses if the objection is wholly revived.
The notice should be signed in the manner prescribed for the notice of objection.

FORM (P).

FORM OF ELECTOR'S NOTICE OF SELECTION IN THE CASE OF DUPLICATE ENTRIES.

To the Revising Barrister for the parliamentary borough of

I hereby elect to vote in respect of the following entry in [division of] the list of electors for the parish [*or* township] of

Name of Elector in full, Surname being first.	Place of Abode.	Nature of Qualification.	Description of Qualifying Property.

(Signed) *A.B.*

Note.—The foregoing form should be filled up with a copy of the entry in the list of electors which the elector wishes to have retained for voting.

The notice should specify the list, and, if the list is made out in divisions, the division in which the entry referred to appears.

If the elector wishes to retain different entries for different purposes, he must adapt the form accordingly.

THE LIBRARIES OFFENCES ACT, 1898.

(61 & 62 VICT. c. 53.)

An Act to provide for the Punishment of Offences in Libraries.

[12th August, 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Libraries Offences Act, 1898.

Penalty for offences.

2. Any person who, in any library or reading-room to which this Act applies, to the annoyance or disturbance of any person using the same,—

(1.) behaves in a disorderly manner ;
(2.) uses violent, abusive, or obscene language ;
(3.) bets or gambles ;
(4.) or who, after proper warning, persists in remaining therein beyond the hours fixed for the closing of such library or reading-room,

shall be liable on summary conviction to a penalty not exceeding forty shillings.

Application of Act.

3. This Act shall apply—

(a) to any library under the Public Libraries Act, 1892 ; and
(b) to any library or reading-room maintained by a Society registered under the Industrial and Provident Societies Act, 1893, or under the Friendly Societies Act, 1896, or by any registered Trade Union.

56 & 57 Vict. c. 39.
59 & 60 Vict. c. 25.

See the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), *ante*, p. 522. The application of this Act has been extended by 1 Edw. 7, c. 19, s. 4, *post*, p. 593, to any museum, art gallery, or school provided under the Act of 1892.

Extent of Act.

4. This Act shall not apply to Scotland or Ireland.

COUNTY COUNCILS (ELECTIONS) ACT AMENDMENT ACT, 1900.

(63 & 64 Vict. c. 13.)

An Act to amend the County Councils (Elections) Act, 1891.

[10th July, 1900.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the County Councils (Elections) Amendment Act, 1900.

Date of holding quarterly meeting of county councils. 54 & 55 Vict. c. 68.

2. In any year, which is not the year of election of county councillors, the ordinary day of election of the chairman and the day for holding the quarterly meeting referred to in subsection (3) of section one of the County Councils (Elections) Act, 1891, may, notwithstanding anything in that subsection, be such day in the months of March, April, or May as the county council shall from time to time determine.

See s. 1 (3) of the County Councils (Elections) Act, 1891, *ante*, p. 512.

Extent of Act.

3. This Act shall not apply to Scotland or Ireland.

THE PUBLIC LIBRARIES ACT, 1901.

(1 EDW. 7, c. 19.)

An Act to amend the Acts relating to Public Libraries, Museums, and Gymnasiums, and to regulate the Liability of Managers of Libraries to Proceedings for Libel. [17th August, 1901.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

See 55 & 56 Vict. c. 53, *ante*, p. 522 ; 56 & 57 Vict. c. 11, *ante*, p. 533 ; and 61 & 62 Vict. c. 53, *ante*, p. 590.

Amendment of Public Libraries Acts, 1892 and 1893.

Short title and construction. 55 & 56 Vict. c. 53. 56 & 57 Vict. c. 11.

1. This Act may be cited as the Public Libraries Act, 1901, and shall be construed as one with the Public Libraries Act, 1892 (herein-after referred to as the principal Act), and the Public Libraries (Amendment) Act, 1893, and those Acts and this Act may be together cited as the Public Libraries Acts, 1892 to 1901.

Qualification of library commissioners.

2.—(1.) Any commissioners appointed for a library district under the principal Act may be either voters in the district or persons who, though not voters, would, if the district were a rural parish having a parish council, be qualified for election as parish councillors.

56 & 57 Vict. c. 73.

(2.) Section forty-six of the Local Government Act, 1894, relating to disqualifications for election to or membership of certain authorities, shall have effect as if a library authority, being a body of commissioners appointed under the principal Act, were one of the authorities mentioned in that section.

Power to library authority to make byelaws.

3.—(1.) A library authority may make byelaws for all or any of the following purposes relating to any library, museum, art gallery, or school, which by virtue of the principal Act or this Act is under their control, that is to say :

(a) for regulating the use of the same and of the contents thereof, and for protecting the same and the fittings, furniture, and contents thereof from injury, destruction, or misuse ;

(b) for requiring from any person using the same any guarantee or security against the loss of or injury to any book or other article ;

(c) for enabling the officers and servants of the library authority to exclude or remove therefrom persons committing any offence against the Libraries Offences Act, 1898, or against the byelaws.

61 & 62 Vict. c. 53.

Section 3.

(2.) All byelaws under this section shall be made subject and according to the provisions respecting byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and those sections shall apply as if the expression "local authority" therein included in every case a library authority. 38 & 39 Vict. c. 55.

(3.) All offences and penalties under any such byelaw may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

The Libraries Offences Act, 1898 (61 & 62 Vict. c. 53), is set out *ante*, p. 590.

The sections of the Public Health Act, 1875, referred to in this section are set out *ante*, p. 39.

Extension of 61 & 62 Vict. c. 53.

4. The Libraries Offences Act, 1898, shall apply to any museum, art gallery, or school provided under the Public Libraries Act, 1892.

Power of library authorities to make agreements for use of library.

5.—(1.) The library authorities of two or more library districts may agree to share, in such proportions and for such period as may be determined by the agreement, the cost of the purchase, erection, repair, and maintenance of any library building in one of those districts, and also the cost of the purchase of books and newspapers for such library, and all other expenses connected with the same, and may also agree as to the management and use of the library, and as to the interchange, hire, and use of books amd newspapers belonging to such authorities respectively.

(2.) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery, or school for art, in like manner as to a library.

Amendment of 55 & 56 Vict. c. 53, s. 18, as to expenses in parishes.

6. In a library district, being a parish, the sanction of the parish meeting or vestry shall not be required annually for raising the sums from time to time due from the parish for defraying the expenses incurred by the library authority, and those sums shall be paid by the overseers on the order of the library authority. But in any parish in a rural district the sanction of the parish meeting shall be required in the year one thousand nine hundred and eleven, and in every tenth year thereafter: Provided that nothing in this section shall affect the operation of section eleven of the Local Government Act, 1894. 56 & 57 Vict. c. 73.

Application of 54 & 55 Vict. c. 22, to museum provided under principal Act.

7. An urban authority for whose district the Museums and Gymnasiums Act, 1891, has been adopted, either wholly or so far as it relates to museums only, may appropriate for the purposes of that Act a museum provided for the district under the principal Act, and thereupon the Museums and Gymnasiums Act, 1891, shall apply to the museum, as if it were provided under that Act.

Notice to Local Government Board.

8. On the adoption of the principal Act for any library district, the library authority shall forthwith give notice in writing of such adoption to the Local Government Board. The library authority of every district in which the Act has already been adopted shall give the like notice within three months after the passing of this Act.

Definition of "voter." 56 & 57 Vict. c. 73.

9. In any library district every person who is a parochial elector within the meaning of the Local Government Act, 1894, shall be a voter for the purposes of the principal Act and this Act; and parochial electors shall for all the purposes of the principal Act be substituted for county electors.

Section 10.

Expenses of repairing damage from subsidence not to be reckoned in limitation of rate.

10. Where in any borough or urban district a building provided under the principal Act shall be damaged through the subsidence of the ground, any expenses incurred by the town council or urban district council in the repair of the damage thereto, shall not be reckoned for the purposes of any limitation of rate under section two of the said principal Act.

Extent of Act.

Act not to apply to Scotland.

11. This Act shall not apply to Scotland.

12. * * * * *

Application of the Museums and Gymnasiums Act, 1891, *and Public Libraries (Amendment) Act,* 1893, *to London.*

Application to London of 54 & 55 Vict. c. 22, and 56 & 57 Vict. c. 11.

13. The Museums and Gymnasiums Act, 1891, and the Public Libraries (Amendment) Act, 1893, shall extend to the administrative county of London, and for the purpose of such extension shall be modified as follows :—

The expression " urban authority " shall include the common council of the city of London and a metropolitan borough council, and the expression " district " or " urban district " shall include the city of London and a metropolitan borough ;

Any expenses incurred by the common council of the city of London or by a metropolitan borough council under the Museums and Gymnasiums Act, 1891, so far as they are not defrayed by fees and other money received under the said Act, shall be defrayed in the manner in which expenses incurred by that council under the principal Act are payable.

Repeal.

Repeal.

14. The Acts mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Section 14.

SCHEDULE.

Session.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 22.	The Museums and Gymnasiums Act, 1891.	In section two, the words " or the administrative county of London."
55 & 56 Vict. c. 53.	The Public Libraries Act, 1892.	Section three, in so far as it is inconsistent with this Act. Sub-section one of section sixteen. Sub-section two of section eighteen, and in sub-section three of the same section the words " but the sanction of the vestry shall not be required for raising the sums from time to time due from the parish for meeting those expenses." So much of section twenty-seven as relates to the definition of a " voter." The First Schedule.

THE EDUCATION ACT, 1902.

(2 Edw. 7, c. 42.)

An Act to make further provision with respect to Education in England and Wales. [18th December, 1902.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Part I.

Local Education Authority.

Local education authorities.

1. For the purposes of this Act the council of every county and of every county borough shall be the local education authority :

Provided that the council of a borough with a population of over ten thousand, or of an urban district with a population of over twenty thousand, shall, as respects that borough or district, be the local education authority for the purpose of Part III. of this Act, and for that purpose as respects that borough or district, the expression " local education authority " means the council of that borough or district.

Part III. (ss. 5—16) relates to elementary education.

The population is to be calculated according to the census of 1901 (s. 23 (8)).

As to the powers of a borough council in respect of education other than elementary, see s. 3, *post* ; and as to the relinquishment by a borough council of their powers and duties under this Act in favour of the county council, see s. 20, *post*.

As to the power of a council to appropriate land held by them as local education authority for any of the purposes of the council otherwise than in their capacity as local education authority, see 9 Edw. 7, c. 29, s. 5, *post*, p. 668.

Throughout this Act the expression " the council of a borough " is used as meaning the mayor, aldermen, and burgesses acting by the council. Therefore land which the council have agreed to acquire for the purposes of the Education Acts should be conveyed to the mayor, aldermen, and burgesses, and not to the council, which is not incorporated by the Act. *Re Leeds Institute of Science, etc., and Leeds City Council*, [1909] 1 Ch. 500 ; 78 L. J. Ch. 321 ; 100 L. T. 468 ; 73 J. P. 201 ; 7 L. G. R. 912 ; 25 T. L. R. 297.

Part II.

Higher Education.

Power to aid higher education.

2.—(1.) The local education authority shall consider the educational needs of their area, and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education, and for that purpose shall apply all or so much as they deem necessary of the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, and shall carry forward for the like purpose any balance thereof which may remain unexpended, and may spend such further sums as they think fit : Provided that the amount raised by the council of a county for the purpose in any year out of rates under this Act shall not exceed the amount which would be produced by a rate of twopence in the

53 & 54 Vict. c. 60.

Part II. Section 2.

pound, or such higher rate as the county council, with the consent of the Local Government Board, may fix (*a*).

(2.) A council, in exercising their powers under this Part of this Act, shall have regard to any existing supply of efficient schools or colleges, and to any steps already taken for the purposes of higher education under the Technical Instruction Acts, 1889 and 1891 (*b*).

52 & 53 Vict. c. 76. 54 & 55 Vict. c. 4.

(*a*) The local education authority for the purpose of this Part of the Act is the county council, but the councils of non-county boroughs and urban districts have concurrent powers under s. 3.

The proceeds of certain duties of excise and of customs (popularly called the "whiskey money") were directed by s. 7 of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), to be paid to the local taxation account. By s. 1 of the Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), the sum of £300,000 out of the English share of such duties was directed to be applied for purposes of police superannuation, and the residue was to be distributed between county and county borough funds, and the council of a county or a county borough were empowered to contribute any sum so received by them for the purposes of technical education. The application of the residue to educational purposes is now made compulsory by the Act of 1902.

As to the power of a local education authority to purchase land for the purpose of this Part of the Act, and to appropriate for the purposes of Part II. any land acquired by them for the purposes of Part III., and *vice versâ*, and to appropriate for any of the purposes of the Education Acts any land acquired by them otherwise than in their capacity as local education authority, see 7 Edw. 7, c. 43, s. 1 (2), *post*, p. 648. As to their power to alienate any land acquired for the purposes of Part II., see 7 Edw. 7, c. 43, s. 1 (6).

The power to supply or aid the supply of higher education is not confined to the education of persons resident in the area of the local education authority. See s. 23 (2), *post*, and 7 Edw. 7, c. 43, s. 12, *post*.

(*b*) The Technical Instruction Acts, 1889 and 1891, are repealed by s. 25 of this Act.

As to the power of a county council to contribute towards the expenditure incurred by the council of a non-county borough or urban district in respect of higher education, and to unite with any other council for the purpose of establishing or maintaining any school or college under this Part of the Act, see the note to s. 3.

The power to supply or aid the supply of higher education includes a power to train teachers and to supply or aid the supply of any education except where that education is given at a public elementary school. Section 22 (3), *post*.

Concurrent powers of smaller boroughs and urban districts.

3. The council of any non-county borough or urban district shall have power as well as the county council to spend such sums as they think fit for the purpose of supplying or aiding the supply of education other than elementary: Provided that the amount raised by the council of a non-county borough or urban district for the purpose in any year out of rates under this Act shall not exceed the amount which would be produced by a rate of one penny in the pound.

This section empowers a borough council to supply higher education subject to the limit of a penny rate without any of the other restrictions which were imposed by the Technical Instruction Acts, which are repealed by s. 25 of this Act. This power is not confined to the education of persons resident in the area of the council. See s. 23 (2), *post*, and 7 Edw. 7, c. 43, s. 12, *post*.

Provision is made for joint action by councils having powers under this Part of the Act for the purpose of establishing or maintaining any school or college by 9 Edw. 7, c. 29, s. 3, *post*.

A county council are empowered by 7 Edw. 7, c. 43, s. 4, *post*, to contribute towards the capital expenditure incurred by the council of any non-county borough or urban district within their area in respect of higher education.

As to the power of any council to borrow money for the purposes of this Act, see

s. 19, *post*; and as to the duty of any council having powers under this Part of the Act to give information to the Board of Education with respect to the exercise of those powers, see 7 Edw. 7, c. 43, s. 15, *post*.

The council of a non-county borough or urban district are empowered by 7 Edw. 7, c. 43, s. 1 (3), *post*, to appropriate for the purpose of their powers under this section any land acquired by them under any other power. As to their power to alienate land acquired by them for the purposes of this Part of the Act, see 7 Edw. 7, c. 43, s. 1 (6).

If any question arises whether any purpose for which a council wish to exercise any powers under the Education Acts is a purpose of Part II. or of Part III. of this Act, it is to be determined by the Board of Education, whose decision is to be conclusive. 7 Edw. 7, c. 43, s. 10, *post*.

Religious instruction.

4.—(1.) A council, in the application of money under this Part of this Act, shall not require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any school, college or hostel aided but not provided by the council, and no pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college, or hostel so provided, except in cases where the council, at the request of parents of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college, or hostel, otherwise than at the cost of the council: Provided that in the exercise of this power no unfair preference shall be shown to any religious denomination.

(2.) In a school or college receiving a grant from, or maintained by, a council under this Part of this Act,

(a) A scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday School, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere; and

(b) The times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom.

Part III.

Elementary Education.

Powers and duties as to elementary education.

5. The local education authority shall throughout their area have the powers and duties of a school board and school attendance committee under the Elementary Education Acts, 1870 to 1900, and any other Acts, including local Acts, and shall also be responsible for and have the control of all secular instruction in public elementary schools not provided by them, and school boards and school attendance committees shall be abolished.

The local education authority is defined by s. 1, *ante*. As to the transfer of property and officers, see Schedule 2, *post*.

Part III. Section 5.

The meaning of the word "abolished" as applied to school boards in this section is that they are to cease to exist for any purpose. *Oldham Corporation* v. *Bank of England*, [1904] 2 Ch. 716; 73 L. J. Ch. 785; 91 L. T. 582; 68 J. P. 584; 2 L. G. R. 1324; 20 T. L. R. 787.

The powers and duties of a local education authority under this Part of the Act include power to aid the instruction of scholars by scholarships and to provide vacation schools and means of recreation for the children during their holidays, and the duty of providing for the medical inspection of the children. 7 Edw. 7, c. 43, ss. 11, 13, *post*. As to the power of a local education authority to appropriate land for the purposes of this Part of the Act, see s. 1 (2) of that Act, *post*.

Management of schools.

6.—(1.) All public elementary schools provided by the local education authority shall, where the local education authority are the council of a county, have a body of managers consisting of a number of managers not exceeding four appointed by that council, together with a number not exceeding two appointed by the minor local authority.

Where the local education authority are the council of a borough or urban district they may, if they think fit, appoint for any school provided by them a body of managers consisting of such number of managers as they may determine.

(2.) All public elementary schools not provided by the local education authority shall, in place of the existing managers, have a body of managers consisting of a number of foundation managers not exceeding four appointed as provided by this Act, together with a number of managers not exceeding two appointed—

(a) where the local education authority are the council of a county, one by that council and one by the minor local authority; and

(b) where the local education authority are the council of a borough or urban district, both by that authority.

(3.) Notwithstanding anything in this section—

(a) Schools may be grouped under one body of managers in manner provided by this Act; and

(b) Where the local education authority consider that the circumstances of any school require a larger body of managers than that provided under this section, that authority may increase the total number of managers, so, however, that the number of each class of managers is proportionately increased.

The expression "minor local authority" is defined by s. 24 (2), *post*.

As to the appointment of foundation managers, see s. 11; and as to the grouping of schools under one management, see s. 12.

Provisions regulating the proceedings of a body of managers are contained in Schedule 1, B.

The managers of a provided school are to deal with such matters relating to the management of the school as the local education authority determine. Schedule 1, B, r. 4, *post*. As to the powers and duties of the managers of a non-provided school, see s. 7, *post*.

The managers of a provided school are the statutory agents of the local education authority, who are liable for their acts and defaults. *Ching* v. *Surrey County Council*, *post*, p. 600.

As to the power of the Board of Education to make orders for recognizing as managers of a school any persons who are acting as managers thereof and for rendering valid acts which might otherwise be invalid by reason of any default of the local education authority, see the Education (Local Authority Default) Act, 1904 (4 Edw. 7, c. 18), *post*.

Maintenance of schools.

7.—(1.) The local education authority shall maintain and keep

efficient all public elementary schools within their area which are necessary, and have the control of all expenditure required for that purpose, other than expenditure for which, under this Act, provision is to be made by the managers; but, in the case of a school not provided by them, only so long as the following conditions and provisions are complied with (*a*):—

(a) The managers of the school shall carry out any directions of the local education authority as to the secular instruction to be given in the school, including any directions with respect to the number and educational qualifications of the teachers to be employed for such instruction, and for the dismissal of any teacher on educational grounds, and if the managers fail to carry out any such direction the local education authority shall, in addition to their other powers, have the power themselves to carry out the direction in question as if they were the managers; but no direction given under this provision shall be such as to interfere with reasonable facilities for religious instruction during school hours (*b*);

(b) The local education authority shall have power to inspect the school;

(c) The consent of the local education authority shall be required to the appointment of teachers, but that consent shall not be withheld except on educational grounds; and the consent of the authority shall also be required to the dismissal of a teacher unless the dismissal be on grounds connected with the giving of religious instruction in the school (*c*);

(d) The managers of the school shall provide the school house free of any charge, except for the teacher's dwelling-house (if any), to the local education authority for use as a public elementary school, and shall, out of funds provided by them, keep the school house in good repair, and make such alterations and improvements in the buildings as may be reasonably required by the local education authority; Provided that such damage as the local authority consider to be due to fair wear and tear in the use of any room in the school house for the purpose of a public elementary school shall be made good by the local education authority (*d*).

(e) The managers of the school shall, if the local education authority have no suitable accommodation in schools provided by them, allow that authority to use any room in the school house out of school hours free of charge for any educational purpose, but this obligation shall not extend to more than three days in the week.

(2.) The managers of a school maintained but not provided by the local education authority, in respect of the use by them of the school furniture out of school hours, and the local education authority in respect of the use by them of any room in the school house out of school hours, shall be liable to make good any damage caused to the furniture or the room, as the case may be, by reason of that use (other than damage arising from fair wear and tear), and the managers shall

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take care that, after the use of a room in the school house by them, the room is left in a proper condition for school purposes.

(3.) If any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education (*e*).

(4.) One of the conditions required to be fulfilled by an elementary school in order to obtain a parliamentary grant shall be that it is maintained under and complies with the provisions of this section.

(5.) In public elementary schools maintained but not provided by the local education authority, assistant teachers and pupil teachers may be appointed, if it is thought fit, without reference to religious creed and denomination, and, in any case in which there are more candidates for the post of pupil teacher than there are places to be filled, the appointment shall be made by the local education authority, and they shall determine the respective qualifications of the candidates by examination or otherwise.

(6.) Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this subsection shall affect any provision in a trust deed for reference to the bishop or superior ecclesiastical or other denominational authority so far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed.

(7.) The managers of a school maintained but not provided by the local education authority shall have all powers of management required for the purpose of carrying out this Act, and shall (subject to the powers of the local education authority under this section) have the exclusive power of appointing and dismissing teachers (*f*).

(*a*) The duty to maintain a non-provided school includes an obligation to bear the cost of giving denominational religious instruction. *Attorney-General* v. *West Riding of Yorkshire County Council*, [1907] A. C. 29; 76 L. J. K. B. 97; 95 L. T. 845; 71 J. P. 41; 5 L. G. R. 89; 23 T. L. R. 171. "Keep efficient" means keep in a position to earn the Parliamentary grant. *Ibid.*, per Lord Loreburn, L.C.

The local education authority are bound to provide a supply of water where such supply is necessary for the maintenance of the school. *Trowbridge Water Co.* v. *Wilts County Council*, [1909] 1 K. B. 824; 78 L. J. K. B. 406; 101 L. T. 35; 53 Sol. J. 448; 73 J. P. 280; 7 L. G. R. 484; 25 T. L. R. 388. In that case water had been supplied by a water company to a voluntary school before the Act of 1902 came into operation, and continued to be supplied to the school buildings after that date without any express agreement. It was held that the conclusion might properly be drawn that the water was being supplied to the local education authority.

Where a pupil in a provided school was injured while playing in the school playground which was in a dangerous condition, it was held that the duty of keeping the playground in good repair was imposed upon the local education authority either by this section or by section 5, and that as they had neglected to do this they were liable in an action for damages, their duties under the Act not being merely ministerial. *Ching* v. *Surrey County Council*, [1910] 1 K. B. 736; 54 Sol. J. 361; 26 T. L. R. 355; followed in *Morris* v. *Carnarvon County Council*, 54 Sol. J. 443; 26 T. L. R. 391.

This section imposes upon the local education authority the duty of providing the

money required for the payment of the salaries of teachers appointed by the managers of a non-provided school; but no contractual relation is created between them and such teachers, and in the absence of any special agreement, no action can be brought by a teacher to recover his salary from the local education authority, even where they have adopted the practice of paying the teachers' salaries directly and not through the managers. *Crocker* v. *Plymouth Corporation*, [1906] 1 K. B. 494; 75 L. J. K. B. 375; 94 L. T. 734; 54 W. R. 391; 70 J. P. 204; 4 L. G. R. 571; 22 T. L. R. 336.

A local education authority have no right to differentiate between the salaries to be paid to teachers having similar qualifications in provided and in non-provided schools. *R.* v. *Board of Education*, [1909] 2 K. B. 1045; 79 L. J. K. B. 66; 101 L. T. 301; 73 J. P. 469; 7 L. G. R. 929; 25 T. L. R. 795; affirmed on appeal, 26 T. L. R. 422.

As to the power of the Board of Education to enforce payment of any expenses incurred by the managers of a school in maintaining and keeping it efficient, for which provision should have been made by the local education authority, see s. 1 of the Education (Local Authority Default) Act, 1904 (4 Edw. 7, c. 18), *post*.

(*b*) A direction of a local education authority fixing the hours of secular instruction in a non-provided school was held to be a direction as to secular instruction although it incidentally affected the time for religious instruction. *Blencowe* v. *Northamptonshire County Council*, [1907] 1 Ch. 504; 76 L. J. Ch. 276; 96 L. T. 385; 71 J. P. 258; 5 L. G. R. 551; 23 T. L. R. 319.

The local education authority have no power to give directions as to the secular instruction which will have the effect of altering the fundamental character of the school. Thus they cannot direct that a school which has hitherto been conducted as a school for scholars of all school ages shall in future be carried on only as an infants' and junior school. *Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685; 77 L. J. K. B. 436; 98 L. T. 670; 72 J. P. 107; 6 L. G. R. 244; 24 T. L. R. 286.

(*c*) By sub-s. (7), *post*, the managers of a non-provided school have the exclusive power of appointing and dismissing teachers. Clause (c) does not prevent them from exercising this power without the consent of the local education authority. The effect of that clause is merely that if they act without such consent the local education authority will be released from their liability to maintain the school. The want of such consent does not invalidate the dismissal of a teacher by the managers. *Young* v. *Cuthbert*, [1906] 1 Ch. 451; 75 L. J. Ch. 217; 94 L. T. 191; 54 W. R. 296; 70 J. P. 130; 4 L. G. R. 356; 22 T. L. R. 251.

This clause was held to have no application to the case of a teacher who had received notice to determine his employment before the Act came into operation, although the notice did not expire until after that date. *Jones* v. *Hughes*, [1905] 1 Ch. 180; 74 L. J. Ch. 57; 92 L. T. 218; 53 W. R. 344; 69 J. P. 33; 3 L. G. R. 1; 21 T. L. R. 59.

(*d*) The Act merely gives the managers of a non-provided school such rights over the building as will enable them to perform their statutory duties. In the absence of any special arrangement the possession of the school remains in the owner, and the managers are not by virtue only of their appointment under the Act in a position to maintain an action of trespass in respect of the school. *Blencowe* v. *Northamptonshire County Council*, *supra*, note (*b*).

(*e*) Where the managers of a non-provided school refused to comply with a direction given by the local education authority as to the hours for secular instruction in the school on the ground that it was *ultra vires*, and the local education authority thereupon refused to maintain the school, it was held that a question arose under this section which was to be determined by the Board of Education and that the Court had no jurisdiction to deal with the matter. *Blencowe* v. *Northamptonshire County Council*, *supra*, note (*b*).

This sub-section however does not apply where the question to be decided involves an examination of the whole scope and tenor of the Act as compared with the antecedent legislation and does not depend upon the terms of this section alone. *Wilford* v. *West Riding of Yorkshire County Council*, *supra*, note (*b*). Further, the powers of the Board of Education are limited to the determination of questions of fact arising under this section; and the jurisdiction of the Court to enforce obedience to

Part III. Section 7.

the law is not excluded. *Ibid.* In that case an injunction was granted to restrain the local education authority from enforcing directions given by them which were *ultra vires* and which if acted upon would have been a breach of their obligation to maintain the school. This decision was approved by the Court of Appeal in *R.* v. *Board of Education, infra.*

Where the Board of Education in determining a question under this section have acted upon a consideration of something extraneous and extra-judicial which ought not to have affected their decision, and have thus declined jurisdiction, their decision will be quashed on *certiorari*, and a *mandamus* will be granted ordering them to hear and determine the question according to law. *R.* v. *Board of Education*, [1909] 2 K. B. 1045; 79 L. J. K. B. 66; 101 L. T. 301; 73 J. P. 469; 7 L. G. R. 929; 25 T. L. R. 795; affirmed on appeal, 26 T. L. R. 422.

(*f*) See note (*c*), *supra.*

Provision of new schools.

8.—(1.) Where the local education authority or any other persons propose to provide a new public elementary school, they shall give public notice of their intention to do so, and the managers of any existing school, or the local education authority (where they are not themselves the persons proposing to provide the school), or any ten ratepayers in the area for which it is proposed to provide the school, may, within three months after the notice is given, appeal to the Board of Education on the ground that the proposed school is not required, or that a school provided by the local education authority, or not so provided, as the case may be, is better suited to meet the wants of the district than the school proposed to be provided, and any school built in contravention of the decision of the Board of Education on such appeal shall be treated as unnecessary.

(2.) If, in the opinion of the Board of Education, any enlargement of a public elementary school is such as to amount to the provision of a new school, that enlargement shall be so treated for the purposes of this section.

(3.) Any transfer of a public elementary school to or from a local education authority shall for the purposes of this section be treated as the provision of a new school.

Necessity of schools.

9. The Board of Education shall, without unnecessary delay, determine, in case of dispute, whether a school is necessary or not, and, in so determining, and also in deciding on any appeal as to the provision of a new school, shall have regard to the interest of secular instruction, to the wishes of parents as to the education of their children, and to the economy of the rates; but a school for the time being recognized as a public elementary school shall not be considered unnecessary in which the number of scholars in average attendance, as computed by the Board of Education, is not less than thirty.

Aid grant. 60 & 61 Vict. c. 5. 33 & 34 Vict. c. 75. 60 & 61 Vict. c. 16.

10.—(1.) In lieu of the grants under the Voluntary Schools Act, 1897, and under section ninety-seven of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1897, there shall be annually paid to every local education authority, out of moneys provided by Parliament—

(a) a sum equal to four shillings per scholar; and

(b) an additional sum of three halfpence per scholar for every complete twopence per scholar by which the amount which would be produced by a penny rate on the area of the authority

falls short of ten shillings a scholar ; Provided that, in estimating the produce of a penny rate in the area of a local education authority not being a county borough, the rate shall be calculated upon the county rate basis, which, in cases where part only of a parish is situated in the area of the local education authority, shall be apportioned in such manner as the Board of Education think just.

But if in any year the total amount of parliamentary grants payable to a local education authority would make the amount payable out of other sources by that authority on account of their expenses under this Part of this Act less than the amount which would be produced by a rate of threepence in the pound, the parliamentary grants shall be decreased, and the amount payable out of other sources shall be increased by a sum equal in each case to half the difference.

(2.) For the purposes of this section the number of scholars shall be taken to be the number of scholars in average attendance, as computed by the Board of Education, in public elementary schools maintained by the authority.

Foundation managers.

11.—(1.) The foundation managers of a school shall be managers appointed under the provisions of the trust deed of the school, but if it is shown to the satisfaction of the Board of Education that the provisions of the trust deed as to the appointment of managers are in any respect inconsistent with the provisions of this Act, or insufficient or inapplicable for the purpose, or that there is no such trust deed available, the Board of Education shall make an order under this section for the purpose of meeting the case.

(2.) Any such order may be made on the application of the existing owners, trustees, or managers of the school, made within a period of three months after the passing of this Act, and after that period on the application of the local education authority or any other person interested in the management of the school, and any such order, where it modifies the trust deed, shall have effect as part of the trust deed, and where there is no trust deed shall have effect as if it were contained in a trust deed.

(3.) Notice of any such application, together with a copy of the draft final order proposed to be made thereon, shall be given by the Board of Education to the local education authority and the existing owners, trustees, and managers, and any other persons who appear to the Board of Education to be interested, and the final order shall not be made until six weeks after notice has been so given.

(4.) In making an order under this section with regard to any school, the Board of Education shall have regard to the ownership of the school building, and to the principles on which the education given in the school had been conducted in the past.

(5.) The Board of Education may, if they think that the circumstances of the case require it, make any interim order on any application under this section to have temporary effect until the final order is made.

(6.) The body of managers appointed under this Act for a public elementary school not provided by the local education authority shall

Part III. Section 11.

be the managers of that school both for the purposes of the Elementary Education Acts, 1870 to 1900, and this Act, and, so far as respects the management of the school as a public elementary school, for the purpose of the trust deed.

(7.) Where the receipt by a school, or the trustees or managers of a school, of any endowment or other benefit is, at the time of the passing of this Act, dependent on any qualification of the managers, the qualification of the foundation managers only shall, in case of question, be regarded.

(8.) The Board of Education may, on the application of the managers of the school, the local education authority, or any person appearing to them to be interested in the school, revoke, vary, or amend any order made under this section by an order made in a similar manner; but before making any such order the draft thereof shall, as soon as may be, be laid before each House of Parliament, and, if within thirty days, being days on which Parliament has sat, after the draft has been so laid before Parliament, either House resolves that the draft, or any part thereof, should not be proceeded with, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order.

Grouping of schools under one management.

12.—(1.) The local education authority may group under one body of managers any public elementary schools provided by them, and may also, with the consent of the managers of the schools, group under one body of managers any such schools not so provided.

(2.) The body of managers of grouped schools shall consist of such number and be appointed in such manner and proportion as, in the case of schools provided by the local education authority, may be determined by that authority, and in the case of schools not so provided, may be agreed upon between the bodies of managers of the schools concerned and the local education authority, or in default of agreement may be determined by the Board of Education.

(3.) Where the local education authority are the council of a county, they shall make provision for the due representation of minor local authorities on the bodies of managers of schools grouped under their direction.

(4.) Any arrangement for grouping schools not provided by the local education authority shall, unless previously determined by consent of the parties concerned, remain in force for a period of three years.

Endowments.

13.—(1.) Nothing in this Act shall affect any endowment, or the discretion of any trustees in respect thereof: Provided that, where under the trusts or other provisions affecting any endowment the income thereof must be applied in whole or in part for those purposes of a public elementary school for which provision is to be made by the local education authority, the whole of the income or the part thereof, as the case may be, shall be paid to that authority, and, in case part only of such income must be so applied and there is no provision under the said trusts or provisions for determining the amount which represents that part, that amount shall be determined, in case of difference

between the parties concerned, by the Board of Education; but if a public inquiry is demanded by the local education authority, the decision of the Board of Education shall not be given until after such an inquiry, of which ten days' previous notice shall be given to the local education authority and to the minor local authority and to the trustees, shall have been first held by the Board of Education at the cost of the local education authority.

(2.) Any money arising from an endowment, and paid to a county council for those purposes of a public elementary school for which provision is to be made by the council, shall be credited by the council in aid of the rate levied for the purposes of this Part of this Act in the parish or parishes which in the opinion of the council are served by the school for the purposes of which the sum is paid, or, if the council so direct, shall be paid to the overseers of the parish or parishes in the proportions directed by the council, and applied by the overseers in aid of the poor rate levied in the parish.

Apportionment of school fees.

14. Where before the passing of this Act fees have been charged in any public elementary school not provided by the local education authority, that authority shall, while they continue to allow fees to be charged in respect of that school, pay such proportion of those fees as may be agreed upon, or, in default of agreement, determined by the Board of Education, to the managers.

Schools attached to institutions.

15. The local education authority may maintain as a public elementary school under the provisions of this Act, but shall not be required so to maintain, any Marine school, or any school which is part of, or is held in the premises of, any institution in which children are boarded, but their refusal to maintain such a school shall not render the school incapable of receiving a parliamentary grant, nor shall the school, if not so maintained, be subject to the provisions of this Act as to the appointment of managers, or as to control by the local education authority.

Power to enforce duties under Elementary Education Acts. 33 & 34 Vict. c. 75.

16. If the local education authority fail to fulfil any of their duties under the Elementary Education Acts, 1870 to 1900, or this Act, or fail to provide such additional public school accommodation within the meaning of the Elementary Education Act, 1870, as is, in the opinion of the Board of Education, necessary in any part of their area, the Board of Education may, after holding a public inquiry, make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and any such order may be enforced by mandamus.

As to public inquiries, see s. 23 (10), *post*.

This section does not exclude the jurisdiction of the High Court in cases where the local education authority have been guilty of misfeasance. *Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685; 77 L. J. K. B. 436; 98 L. T. 670; 72 J. P. 107; 6 L. G. R. 244; 24 T. L. R. 286. See note (*b*) to s. 7, *ante*.

Further powers are given to the Board of Education in cases where a local authority have made default in the performance of their duties as respects any elementary school by the Education (Local Authority Default) Act, 1904 (4 Edw. 7, c. 18), *post*.

Part IV. Section 17.

PART IV.

General.

Education committees.

17.—(1.) Any council having powers under this Act shall establish an education committee or education committees, constituted in accordance with a scheme made by the council and approved by the Board of Education: Provided that if a council having powers under Part II. only of this Act determine that an education committee is unnecessary in their case, it shall not be obligatory on them to establish such a committee (*a*).

(2.) All matters relating to the exercise by the council of their powers under this Act, except the power of raising a rate or borrowing money, shall stand referred to the education committee, and the council, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of the education committee with respect to the matter in question. The council may also delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers under this Act, except the power of raising a rate or borrowing money (*b*).

(3.) Every such scheme shall provide—

(a) for the appointment by the council of at least a majority of the committee, and the persons so appointed shall be persons who are members of the council, unless, in the case of a county, the council shall otherwise determine;

(b) for the appointment by the council, on the nomination or recommendation, where it appears desirable, of other bodies (including associations of voluntary schools), of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acts;

(c) for the inclusion of women as well as men among the members of the committee;

(d) for the appointment, if desirable, of members of school boards existing at the time of the passing of this Act as members of the first committee.

(4.) Any person shall be disqualified for being a member of an education committee, who, by reason of holding an office or place of profit, or having any share or interest in a contract or employment, is disqualified for being a member of the council appointing the education committee, but no such disqualification shall apply to a person by reason only of his holding office in a school or college aided, provided, or maintained by the council.

(5.) Any such scheme may, for all or any purposes of this Act, provide for the constitution of a separate education committee for any area within a county, or for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts, or of parts thereof. In the case of any such joint committee, it shall suffice that a majority of the members are appointed by the councils of any of the counties, boroughs, or districts out of which or parts of which the area is formed (*c*).

(6.) Before approving a scheme, the Board of Education shall take such measures as may appear expedient for the purpose of giving publicity to the provisions of the proposed scheme, and, before approving any scheme which provides for the appointment of more than one education committee, shall satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education (*d*).

(7.) If a scheme under this section has not been made by a council and approved by the Board of Education within twelve months after the passing of this Act, that Board may, subject to the provisions of this Act, make a provisional order for the purposes for which a scheme might have been made.

(8.) Any scheme for establishing an education committee of the council of any county or county borough in Wales or of the county of Monmouth or county borough of Newport shall provide that the county governing body constituted under the Welsh Intermediate Education Act, 1889, for any such county or county borough shall cease to exist, and shall make such provision as appears necessary or expedient for the transfer of the powers, duties, property, and liabilities of any such body to the local education authority under this Act, and for making the provisions of this section applicable to the exercise by the local education authority of the powers so transferred.

52 & 53 Vict. c. 40.

(*a*) The council have power to determine the order in which the members of the education committee are to retire; but when they have once determined the order by a scheme made under this section, they have no power to alter it except by a new scheme made under s. 21 (3), *post*. They cannot reserve to themselves power to vary the order from time to time. *Milward* v. *Barry Urban District Council*, [1904] 2 Ch. 481; 73 L. J. Ch. 804; 91 L. T. 290; 53 W. R. 21; 68 J. P. 569; 2 L. G. R. 1222; 20 T. L. R. 705.

(*b*) The provisions of this sub-section have been made applicable by s. 1 of the Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), *post*, to any powers connected with education conferred on the council by or under any other Act, scheme, or order, except the power of raising a rate or borrowing money.

As to the position of an education committee to whom the powers of a council under this Act have been delegated, see *Young* v. *Cuthbert*, [1906] 1 Ch. 451; 75 L. J. Ch. 217; 94 L. T. 191; 54 W. R. 296; 70 J. P. 130; 4 L. G. R. 356; 22 T. L. R. 251; and as to committees appointed by a borough council, see s. 22 of the Municipal Corporations Act, 1882, *ante*. Rules as to the proceedings of an education committee are contained in Schedule 1, A, *post*. As to the power of such a committee to appoint sub-committees, see r. (6) of that Schedule.

As to the admission of the press to meetings of the committee, see the note to Schedule 2, r. 9 of the Municipal Corporations Act, 1882.

As to the right to inspect the minutes of an education committee appointed by the London County Council, see the notes to s. 233 of the Municipal Corporations Act, 1882, *ante*.

(*c*) A scheme providing for the constitution of a joint education committee may make provision for the proportions in which any expenditure on matters referred or delegated to that committee is to be borne as between the different councils. 7 Edw. 7, c. 43, s. 7, *post*. As to the audit of the accounts of a joint committee, see s. 6 of that Act, *post*.

(*d*) There is no obligation on the Board of Education to publish a scheme which they have disapproved. *Ex parte Cardiff Corporation*, (1904) 20 T. L. R. 317.

Expenses.

18.—(1.) The expenses of a council under this Act shall, so far as not otherwise provided for, be paid, in the case of the council of a county out of the county fund, and in the case of the council of a

Part IV. Section 18.

borough out of the borough fund or rate, or, if no borough rate is levied, out of a separate rate to be made, assessed, and levied in like manner as the borough rate, and in the case of the council of an urban district other than a borough in manner provided by section thirty-three of the Elementary Education Act, 1876, as respects the expenses mentioned in that section (*a*) : Provided that—

39 & 40 Vict. c. 79.

(a) the county council may, if they think fit (after giving reasonable notice to the overseers of the parish or parishes concerned), charge any expenses incurred by them under this Act with respect to education other than elementary on any parish or parishes which, in the opinion of the council, are served by the school or college in connexion with which the expenses have been incurred ; and

(b) the county council shall not raise any sum on account of their expenses under Part III. of this Act within any borough or urban district the council of which is the local education authority for the purposes of that Part ; and

(c) the county council shall charge such portion as they think fit, not being less than one-half or more than three-fourths, of any expenses incurred by them in respect of capital expenditure or rent on account of the provision or improvement of any public elementary school on the parish or parishes which, in the opinion of the council, are served by the school (*b*) ; and

(d) the county council shall raise such portion as they think fit, not being less than one-half or more than three-fourths, of any expenses incurred to meet the liabilities on account of loans or rent of any school board transferred to them, exclusively within the area which formed the school district in respect of which the liability was incurred, so far as it is within their area.

(2.) All receipts in respect of any school maintained by a local education authority, including any parliamentary grant, but excluding sums specially applicable for purposes for which provision is to be made by the managers, shall be paid to that authority.

(3.) Separate accounts shall be kept by the council of a borough of their receipts and expenditure under this Act, and those accounts shall be made up and audited in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of those accounts and to all matters incidental thereto and consequential thereon, including the penal provisions, shall apply in lieu of the provisions of the Municipal Corporations Act, 1882, relating to accounts and audit (*c*).

45 & 46 Vict. c. 50.

(4.) Where under any local Act the expenses incurred in any borough for the purposes of the Elementary Education Acts, 1870 to 1900, are payable out of some fund or rate other than the borough fund or rate, the expenses of the council of that borough under this Act shall be payable out of that fund or rate instead of out of the borough fund or rate.

(5.) Where any receipts or payments of money under this Act are entrusted by the local education authority to any education committee established under this Act, or to the managers of any public elementary

school, the accounts of those receipts and payments shall be accounts of the local education authority, but the auditor of those accounts shall have the same powers with respect to managers as he would have if the managers were officers of the local education authority (*d*).

(*a*) The borough rate is levied as part of the poor rate. A person who has refused to pay so much of a poor rate as is levied in respect of the expenses of a borough or county council under this Act is not entitled to be registered as a burgess or a parochial elector. *Ash* v. *Nicholl; Cox* v. *Merriman, ante*, p. 15; and see *Whitehaven Harbour Commissioners* v. *Whitehaven Union*, (1905) 70 J. P. 89; 4 L. G. R. 128.

(*b*) The words "capital expenditure" mean expenditure on account of capital. They refer to the nature of the expenditure, not the fund or source out of which it comes. *R.* v. *Wraith*, [1907] 2 K. B. 756; 76 L. J. K. B. 881; 97 L. T. 577; 71 J. P. 447; 5 L. G. R. 1091.

Expenses incurred by a county council in providing means of conveyance for teachers or children under s. 23 (1), *post*, may be treated as capital expenditure. 7 Edw. 7, c. 43, s. 14 (2), *post*. If the Local Government Board by order declare that expenses incurred for particular specified purposes may or may not be properly treated under this section as expenses incurred in respect of capital expenditure, no question can be raised on audit as to the treatment of such expenses if they are treated in accordance with the order. *Ibid.*, s. 5, *post*.

(*c*) The accounts of a county council are required by s. 71 (3) of the Local Government Act, 1888 (51 & 52 Vict. c. 41), to be audited by district auditors appointed by the Local Government Board in like manner as accounts of an urban authority under ss. 247 and 250 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, are to apply as if they were therein re-enacted with the necessary modifications.

The provisions of the Municipal Corporations Act, 1882, relating to accounts and audit, which are excluded by this sub-section, are contained in ss. 25—28 of that Act, *ante*, pp. 41—43.

As to the audit of the accounts of a joint education committee, see 7 Edw. 7, c. 43, s. 6, *post*.

(*d*) As to the accounts of any receipts or payments of money entrusted by a council having powers under Part II. of this Act to the managers of any school provided by them for the purpose of supplying education other than elementary, see 9 Edw. 7, c. 29, s. 2, *post*.

Borrowing.

19.—(1.) A council may borrow for the purposes of the Elementary Education Acts, 1870 to 1900, or this Act, in the case of a county council as for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough, borough, or urban district as for the purposes of the Public Health Acts, but the money borrowed by a county borough, borough, or urban district council shall be borrowed on the security of the fund or rate out of which the expenses of the council under this Act are payable.

51 & 52 Vict. c. 41.

(2.) Money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purposes of section sixty-nine of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district for the purpose of the limitation on borrowing under subsections two and three of section two hundred and thirty-four of the Public Health Act, 1875.

38 & 39 Vict. c. 55.

As to the borrowing powers of a borough council for the purposes of the Public Health Acts, see ss. 233 and 234 of the Public Health Act, 1875 (38 & 39 Vict. c. 55). The expenses of a borough council under this Act are payable out of the borough fund or rate under s. 18.

A local education authority may, with the consent or sanction of the Local Government Board, borrow under this section or in such other manner as that Board may

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approve such sums as in the opinion of that Board are required to provide a working balance for carrying this Act into effect, and the consent or sanction or approval so given is conclusive as to the power of the local education authority to borrow. 3 Edw. 7, c. 10, *post.*

Where a county council contribute towards the capital expenditure incurred by a borough council in respect of higher education, the contribution is to form part of the security on which money may be borrowed by the borough council under this section. 7 Edw. 7, c. 43, s. 4, *post.*

The period for repayment of money borrowed by a county council under the Education Acts has been extended to sixty years by 7 Edw. 7, c. 43, s. 3, *post.*

The Public Works Loan Commissioners are empowered to lend to a local education authority any money which that authority are authorized to borrow for the purposes of Part II. of this Act. 7 Edw. 7, c. 43, s. 8, *post.*

Arrangements between councils.

20. An authority having powers under this Act—

(a) may make arrangements with the council of any county, borough, district, or parish, whether a local education authority or not, for the exercise by the council, on such terms and subject to such conditions as may be agreed on, of any powers of the authority in respect of the management of any school or college within the area of the council; and

(b) if the authority is the council of a non-county borough or urban district may, at any time after the passing of this Act, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council of the county any of their powers and duties under this Act, and in that case the powers and duties of the authority so relinquished shall cease, and the area of the authority, if the powers and duties relinquished include powers as to elementary education, shall, as respects those powers, be part of the area of the county council.

Provisional orders and schemes. 38 & 39 Vict. c. 55.

21.—(1.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to provisional orders), shall apply to any provisional order made under this Act as if it were made under that Act, but references to a local authority shall be construed as references to the authority to whom the order relates, and references to the Local Government Board shall be construed as references to the Board of Education.

(2.) Any scheme or provisional order under this Act may contain such incidental or consequential provisions as may appear necessary or expedient.

(3.) A scheme under this Act when approved shall have effect as if enacted in this Act, and any such scheme, or any provisional order made for the purposes of such a scheme, may be revoked or altered by a scheme made in like manner and having the same effect as an original scheme.

Sections 297 and 298 of the Public Health Act, 1875, are set out, *ante*, p. 451.

Provision as to elementary and higher education powers respectively.

22.—(1.) In this Act and in the Elementary Education Acts the expression "elementary school" shall not include any school carried on as an evening school under the regulations of the Board of Education.

(2.) The power to provide instruction under the Elementary Education Acts, 1870 to 1900, shall, except where those Acts expressly provide

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to the contrary, be limited to the provision in a public elementary school of instruction given under the regulations of the Board of Education to scholars who, at the close of the school year, will not be more than sixteen years of age: Provided that the local education authority may, with the consent of the Board of Education, extend those limits in the case of any such school if no suitable higher education is available within a reasonable distance of the school.

(3.) The power to supply or aid the supply of education other than elementary includes a power to train teachers, and to supply or aid the supply of any education except where that education is given at a public elementary school.

Miscellaneous provisions.

23.—(1.) The powers of a council under this Act shall include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school or college whenever the council shall consider such provision or payment required by the circumstances of their area or of any part thereof (*a*).

(2.) The power of a council to supply or aid the supply of education, other than elementary, shall include power to make provision for the purpose outside their area in cases where they consider it expedient to do so in the interests of their area, and shall include power to provide or assist in providing scholarships for, and to pay or assist in paying the fees of, students [*ordinarily resident in the area of the council*] at schools or colleges or hostels within or without that area (*b*).

(3.) The county councillors elected for an electoral division consisting wholly of a borough or urban district whose council are a local education authority for the purpose of Part III. of this Act, or of some part of such a borough or district shall not vote in respect of any question arising before the county council which relates only to matters under Part III. of this Act.

(4.) The amount which would be produced by any rate in the pound shall be estimated for the purposes of this Act in accordance with regulations made by the Local Government Board.

51 & 52 Vict. c. 42. 54 & 55 Vict. c. 73.

(5.) The Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to any assurance, within the meaning of the said Act of 1888, of land for the purpose of a school house for an elementary school (*c*).

(6.) A woman is not disqualified, either by sex or marriage, for being on any body of managers or education committee under this Act.

(7.) Teachers in a school maintained but not provided by the local education authority shall be in the same position as respects disqualification for office as members of the authority as teachers in a school provided by the authority.

(8.) Population for the purposes of this Act shall be calculated according to the census of nineteen hundred and one.

51 & 52 Vict. c. 41.

(9.) Subsections one and five of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply with respect to any order, consent, sanction, or approval which the

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Local Government Board are authorised to make or give under this Act (*d*).

(10.) The Board of Education may, if they think fit, hold a public inquiry for the purpose of the exercise of any of their powers or the performance of any of their duties under this Act, and section seventy-three of the Elementary Education Act, 1870, shall apply to any public inquiry so held or held under any other provision of this Act.

33 & 34 Vict. c. 75.

(*a*) The expenses incurred by a county council in providing means of conveyance under this sub-section may be treated as capital expenditure. See note (*b*) to s. 18, *ante*.

(*b*) The words in italics have been repealed by 7 Edw. 7, c. 43, s. 12, *post*, which declares that any power of a council under this Act to supply or aid the supply of education other than elementary is not confined to the education of persons resident in their area.

(*c*) See the Mortmain and Charitable Uses Act, 1888, *ante*, p. 462.

(*d*) Section 87 of the Local Government Act, 1888, is set out, *ante*, p. 450.

Interpretation.

24.—(1.) Unless the context otherwise requires, any expression to which a special meaning is attached in the Elementary Education Acts, 1870 to 1900, shall have the same meaning in this Act.

(2.) In this Act the expression "minor local authority" means, as respects any school, the council of any borough or urban district, or the parish council or (where there is no parish council) the parish meeting of any parish which appears to the county council to be served by the school. Where the school appears to the county council to serve the area of more than one minor local authority the county council shall make such provision as they think proper for joint appointment of managers by the authorities concerned.

(3.) In this Act the expressions "powers," "duties," "property," and "liabilities" shall, unless the context otherwise requires, have the same meanings as in the Local Government Act, 1888.

51 & 52 Vict. c. 41.

(4.) In this Act the expression "college" includes any educational institution, whether residential or not.

(5.) In this Act, unless the context otherwise requires, the expression "trust deed" includes any instrument regulating the trusts or management of a school or college.

See the definitions of "powers," "duties," "property," and "liabilities" in s. 100 of the Local Government Act, 1888, *ante*, p. 455.

Provisions as to proceedings, transfer, &c., application of enactments and repeal.

25.—(1.) The provisions set out in the First and Second Schedules to this Act relating to education committees and managers, and to the transfer of property and officers, and adjustment, shall have effect for the purpose of carrying the provisions of this Act into effect.

(2.) In the application of the Elementary Education Acts, 1870 to 1900, and other provisions referred to in that schedule, the modifications specified in the Third Schedule to this Act shall have effect.

(3.) The enactments mentioned in the Fourth Schedule to this Act shall be repealed to the extent specified in the third column of that schedule.

Application of Act to Scilly Islands.

26. For the purposes of this Act the Council of the Isles of Scilly shall be the local education authority for the Scilly Islands, and the

expenses of the council under this Act shall be general expenses of the Council. Part IV. Section 26.

Extent, commencement, and short title.

27.—(1.) This Act shall not extend to Scotland or Ireland, or, except as expressly provided, to London.

(2.) This Act shall, except as expressly provided, come into operation on the appointed day, and the appointed day shall be the twenty-sixth day of March nineteen hundred and three, or such other day, not being more than eighteen months later, as the Board of Education may appoint, and different days may be appointed for different purposes and for different provisions of this Act, and for different councils.

1 Edw. 7, c. 11. 2 Edw. 7, c. 19.

(3.) The period during which local authorities may, under the Education Act, 1901, as renewed by the Education Act, 1901 (Renewal) Act, 1902, empower school boards to carry on the work of the schools and classes to which those Acts relate shall be extended to the appointed day, and in the case of London to the twenty-sixth day of March nineteen hundred and four.

(4.) This Act may be cited as the Education Act, 1902, and the Elementary Education Acts, 1870 to 1900, and this Act may be cited as the Education Acts, 1870 to 1902.

SCHEDULES.

FIRST SCHEDULE.

Section 25.

PROVISION FOR EDUCATION COMMITTEES AND MANAGERS.

A.—*Education Committees.*

(1.) The council by whom an education committee is established may make regulations as to the quorum, proceedings, and place of meeting of that committee, but, subject to any such regulations, the quorum, proceedings, and place of meeting of the committee shall be such as the committee determine.

(2.) The chairman of the education committee at any meeting of the committee shall, in case of an equal division of votes, have a second or casting vote.

(3.) The proceedings of an education committee shall not be invalidated by any vacancy among its members or by any defect in the election, appointment, or qualification of any members thereof.

(4.) Minutes of the proceedings of an education committee shall be kept in a book provided for that purpose, and a minute of those proceedings, signed at the same or next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting of the committee at which the minute is signed, shall be received in evidence without further proof.

(5.) Until the contrary is proved, an education committee shall be deemed to have been duly constituted and to have power to deal with any matters referred to in its minutes.

Schedule 1.

(6.) An education committee may, subject to any directions of the council, appoint such and so many sub-committees, consisting either wholly or partly of members of the committee, as the committee thinks fit.

See the notes to s. 22 of the Municipal Corporations Act, 1882, *ante*, which contains similar provisions as to committees appointed by a borough council.

A sub-committee appointed to deal with the appointment and dismissal of teachers was held to have power to give the consent of the local education authority to the dismissal of a teacher; but a section appointed by such sub-committee to deal with the details surrounding the dismissal of teachers was held to be a subordinate body empowered only to make recommendations to the sub-committee, so that a consent given by the section was not effective until it had been approved by the sub-committee. *Young* v. *Cuthbert*, [1906] 1 Ch. 451; 75 L. J. Ch. 217; 94 L. T. 191; 54 W. R. 296; 70 J. P. 130; 4 L. G. R. 356; 22 T. L. R. 251.

As to the admission of newspaper reporters to the meetings of an education committee, see the note to Schedule 2, r. 9 of the Municipal Corporations Act, 1882, *ante*.

B.—*Managers.*

(1.) A body of managers may choose their chairman, except in cases where there is an ex-officio chairman, and regulate their quorum and proceedings in such manner as they think fit, subject, in the case of the managers of a school provided by the local education authority, to any directions of that authority.

Provided that the quorum shall not be less than three, or one-third of the whole number of managers, whichever is the greater.

(2.) Every question at a meeting of a body of managers shall be determined by a majority of the votes of the managers present and voting on the question, and in case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(3.) The proceedings of a body of managers shall not be invalidated by any vacancy in their number, or by any defect in the election, appointment, or qualification of any manager.

(4.) The body of managers of a school provided by the local education authority shall deal with such matters relating to the management of the school, and subject to such conditions and restrictions, as the local education authority determine.

(5.) A manager of a school not provided by the local education authority, appointed by that authority or by the minor local authority, shall be removable by the authority by whom he is appointed, and any such manager may resign his office.

(6.) The body of managers shall hold a meeting at least once in every three months.

(7.) Any two managers may convene a meeting of the body of managers.

(8.) The minutes of the proceedings of every body of managers shall be kept in a book provided for that purpose.

(9.) A minute of the proceedings of a body of managers, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(10.) The minutes of a body of managers shall be open to inspection by the local education authority.

(11.) Until the contrary is proved, a body of managers shall be deemed to be duly constituted and to have power to deal with the matters referred to in their minutes. Schedule 1.

A resolution passed at a meeting of school managers in favour of the appointment of a particular candidate as a teacher does not constitute a contract until it is communicated by them to the selected candidate. *Powell* v. *Lee*, (1908) 99 L. T. 284; 72 J. P. 353; 24 T. L. R. 606.

SECOND SCHEDULE. Section 25.

Provisions as to Transfer of Property and Officers, and Adjustment.

(1.) The property, powers, rights, and liabilities (including any property, powers, rights, and liabilities vested, conferred, or arising under any local Act or any trust deed) of any school board or school attendance committee existing at the appointed day shall be transferred to the council exercising the powers of the school board.

The effect of this provision is to vest the property of a school board in the council without any necessity for a deed of transfer or conveyance. *Oldham Corporation* v. *Bank of England*, [1904] 2 Ch. 716; 73 L. J. Ch. 785; 91 L. T. 582; 68 J. P. 584; 2 L. G. R. 1324; 20 T. L. R. 787. But where the powers of the school board of a united school district have been transferred by the Act to two or more authorities, this clause does not apply, and there must be an adjustment of the property and liabilities between the councils concerned. *Re Wallsend Corporation and Northumberland County Council*, [1906] 2 Ch. 506; 75 L. J. Ch. 813; 95 L. T. 259; 70 J. P. 434; 4 L. G. R. 1141; 22 T. L. R. 773; see also *Hebburn Urban District Council* v. *Hedworth, etc. United District School Board*, (1904) 90 L. T. 145; 68 J. P. 232; 2 L. G. R. 821; 20 T. L. R. 244. As to such adjustment, see r. (22), *post*.

(2.) Where, under the provisions of this Act, any council relinquishes its powers and duties in favour of a county council, any property or rights acquired and any liabilities incurred, for the purpose of the performance of the powers and duties relinquished, including any property or rights vested or arising, or any liabilities incurred, under any local Act or trust deed, shall be transferred to the county council.

(3.) Any loans transferred to a council under this Act shall, for the purpose of the limitation on the powers of the council to borrow, be treated as money borrowed under this Act.

(4.) Any liability of an urban district council incurred under the Technical Instruction Acts, 1889 and 1891, and charged on any fund or rate, shall, by virtue of this Act, become charged on the fund or rate out of which the expenses of the council under this Act are payable, instead of on the first-mentioned fund or rate. 52 & 53 Vict. c. 76. 54 & 55 Vict. c. 4.

(5.) Section two of this Act shall apply to any balance of the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, remaining unexpended and unappropriated by any council at the appointed day. 53 & 54 Vict. c. 60.

(6.) Where the liabilities of a school board transferred to the local education authority under this Act comprise a liability on account of money advanced by that authority to the school board, the Local Government Board may make such orders as they think fit for providing

Schedule 2.

for the repayment of any debts incurred by the authority for the purposes of those advances within a period fixed by the order, and, in case the money advanced to the school board has been money standing to the credit of any sinking fund or redemption fund or capital money applied under the Local Government Acts, 1888 and 1894, or either of them, for the repayment to the proper fund or account of the money so advanced.

51 & 52 Vict. c. 41. 56 & 57 Vict. c. 73.

Any order of the Local Government Board made under this provision shall have effect as if enacted in this Act.

(7.) Where a district council ceases by reason of this Act to be a school authority within the meaning of the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Act, 1899, any property or rights acquired and any liabilities incurred under those Acts shall be transferred to the county council, and, notwithstanding anything in this Act, the county council may raise any expenses incurred by them to meet any liability of a school authority under those Acts (whether a district council or not), and transferred to the county council, off the whole of their area, or off any parish or parishes which in the opinion of the council are served by the school in respect of which the liability has been incurred.

56 & 57 Vict. c. 42. 62 & 63 Vict. c. 32.

(8.) Sections eighty-five to eighty-eight of the Local Government Act, 1894 (which contain transitory provisions), shall apply with respect to any transfer mentioned in this schedule, subject as follows :—

56 & 57 Vict. c. 73.

(a) references to " the appointed day " and to " the passing of this Act " shall be construed, as respects a case of relinquishment of powers and duties, as references to the date on which the relinquishment takes effect ; and

(b) the powers and duties of a school board or school attendance committee which is abolished, or a council which ceases under the provisions of this Act to exercise powers and duties, shall be deemed to be powers and duties transferred under this Act ; and

(c) subsections four and five of section eighty-five shall not apply.

Sections 85—88 of the Local Government Act, 1894, are as follows :

" 85.—(1.) Every rate and precept for contributions made before the appointed day may be assessed, levied, and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

" (2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day ; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

" (3.) All proceedings, legal and other, commenced before the appointed day may be carried on in like manner as nearly as may be as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act.

* * * * *

Schedule 2.

"86.—(1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same or by the transferee as the case may require.

"(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day all current debts and liabilities incurred by such authority.

"87. All such byelaws, orders, and regulations of any authority whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly.

"88.—(1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding or any cause of action or proceeding is pending or existing by or against any authority in relation thereto, the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

"(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if instead of the authority the council or parish meeting had been a party thereto."

(9.) The disqualification of any persons who are, at the time of the passing of this Act, members of any council, and who will become disqualified for office in consequence of this Act, shall not, if the council so resolve, take effect until a day fixed by the resolution, not being later than the next ordinary day of retirement of councillors in the case of a county council, the next ordinary day of election of councillors in the case of the council of a borough, and the fifteenth day of April in the year nineteen hundred and four in the case of an urban district council.

(10.) No election of members of a school board shall be held after the passing of this Act, and the term of office of members of any school board holding office at the passing of this Act, or appointed to fill casual vacancies after that date, shall continue to the appointed day, and the Board of Education may make orders with respect to any matter which it appears to them necessary or expedient to deal with for the purpose of carrying this provision into effect, and any order so made shall operate as if enacted in this Act.

(11.) Where required for the purpose of bringing the accounts of a school to a close before the end of the financial year of the school, or for the purpose of meeting any change consequent on this Act, the Board of Education may calculate any parliamentary grant in respect of any month or other period less than a year, and may pay any parliamentary grant which has accrued before the appointed day at such times and in such manner as they think fit.

Schedule 2.

(12.) Any parliamentary grant payable to a public elementary school not provided by a school board in respect of a period before the appointed day shall be paid to the persons who were managers of the school immediately before that day, and shall be applied by them in payment of the outstanding liabilities on account of the school, and so far as not required for that purpose shall be paid to the persons who are managers of the school for the purposes of this Act and shall be applied by them for the purposes for which provision is to be made under this Act by those managers, or for the benefit of any general fund applicable for those purposes; Provided that the Board of Education may, if they think fit, pay any share of the aid grant under the Voluntary Schools Act, 1897, allotted to an association of voluntary schools, to the governing body of that association, if such governing body satisfy the Board of Education that proper arrangements have been made for the application of any sum so paid.

60 & 61 Vict. c. 5.

(13.) Any school which has been provided by a school board or is deemed to have been so provided shall be treated for the purposes of the Elementary Education Acts, 1870 to 1900, and this Act, as a school which has been provided by the local education authority, or which is deemed to have been so provided, as the case may be.

(14.) The local education authority shall be entitled to use for the purposes of the school any school furniture and apparatus belonging to the trustees or managers of any public elementary school not provided by a school board, and in use for the purposes of the school before the appointed day.

(15.) During the period between the passing of this Act and the appointed day, the managers of any public elementary school, whether provided by a school board or not, and any school attendance committee, shall furnish to the council, which will on the appointed day become the local education authority, such information as that council may reasonably require.

(16.) The officers of any authority whose property, rights, and liabilities are transferred under this Act to any council shall be transferred to and become the officers of that council, but that council may abolish the office of any such officer whose office they deem unnecessary.

(17.) Every officer so transferred shall hold his office by the same tenure and on the same terms and conditions as before the transfer, and while performing the same duties shall receive not less salary or remuneration than theretofore, but if any such officer is required to perform duties which are not analogous to or which are an unreasonable addition to those which he is required to perform at the date of the transfer, he may relinquish his office, and any officer who so relinquishes his office, or whose office is abolished, shall be entitled to compensation under this Act.

(18.) A council may, if they think fit, take into account continuous service under any school boards or school attendance committees in order to calculate the total period of service of any officer entitled to compensation under this Act.

59 & 60 Vict. c. 50.

(19.) If an officer of any authority to which the Poor Law Officers' Superannuation Act, 1896, applies is under this Act transferred to any

council, and has made the annual contributions required to be made under that Act, the provisions of that Act shall apply, subject to such modifications as the Local Government Board may by order direct for the purpose of making that Act applicable to the case.

(20.) Any local education authority who have established any pension scheme, or scheme for the superannuation of their officers, may admit to the benefits of that scheme any officers transferred under this Act on such terms and conditions as they think fit.

(21.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply as respects officers transferred under this Act, and also (with the necessary modifications) to any other officers who, by virtue of this Act or anything done in pursuance or in consequence of this Act, suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, in like manner as it applies to officers transferred under this Act, subject as follows :— 51 & 52 Vict. c. 41.

(a) any reference in that section to the county council shall include a reference to a borough or urban district council ; and

(b) references in that section to "the passing of this Act" shall be construed, as respects a case of relinquishment of powers and duties, as references to the date on which the relinquishment takes effect ; and

(c) any reference to powers transferred shall be construed as a reference to property transferred ; and

(d) any expenses shall be paid out of the fund or rate out of which the expenses of a council under this Act are paid, and, if any compensation is payable otherwise than by way of an annual sum, the payment of that compensation shall be a purpose for which a council may borrow for the purposes of this Act.

Section 120 of the Local Government Act, 1888, which is set out, *ante*, p. 457, entitles an officer to have compensation paid to him by the county council to whom the powers of the authority whose officer he was are transferred.

A rate collector employed by the Corporation of the City of London was held not to be entitled to compensation from the London County Council under this rule because none of the powers or property of the Corporation had been transferred to the County Council. *R.* v. *London County Council*, [1906] 1 K. B. 346 ; 75 L. J. K. B. 241 ; 94 L. T. 218 ; 54 W. R. 439 ; 70 J. P. 160 ; 4 L. G. R. 305 ; 22 T. L. R. 235.

The superintendent of a training ship, whose office was abolished after the Act came into operation, was held not to be entitled to compensation because the abolition of the office was not a thing done in pursuance or in consequence of the Act. *R.* v. *London County Council*, (1907) 23 T. L. R. 493. Compare *Latter* v. *Littlehampton Urban District Council*, (1909) 101 L. T. 172 ; 73 J. P. 426.

(22.) Section sixty-eight of the Local Government Act, 1894 (which relates to the adjustment of property and liabilities), shall apply with respect to any adjustment required for the purposes of this Act. 56 & 57 Vict. c. 73.

The section referred to is set out, *ante*, p. 567. As to the necessity for an adjustment where the area of a united school district has been transferred by the Act to two or more authorities, see *Re Wallsend Corporation and Northumberland County Council*, [1906] 2 Ch. 506 ; 75 L. J. Ch. 813 ; 95 L. T. 259 ; 70 J. P. 434 ; 4 L. G. R. 1141 ; 22 T. L. R. 773. Where different days had been appointed for the Act to come into operation for the different councils concerned, it was held that there must be a separate adjustment of property and liabilities in respect of each occasion on

Schedule 2.

which a transfer of the powers of the school board took place. *Hebburn Urban District Council* v. *Hedworth, etc. United District School Board*, (1904) 90 L. T. 145; 68 J. P. 232; 2 L. G. R. 821; 20 T. L. R. 244.

As to the effect of a compromise of a dispute between two local education authorities, see *Attorney-General* v. *Essex County Council*, (1907) 71 J. P. 557; 24 T. L. R. 22.

Section 25.

THIRD SCHEDULE.

MODIFICATION OF ACTS, &c.

(1.) References to school boards and school districts shall be construed as references to local education authorities and the areas for which they act, except as respects transactions before the appointed day, and except that in paragraph (2) of section nineteen of the Elementary Education Act, 1876, and in subsection (1) of section two of the Education Code (1890) Act, 1890, references to a school district shall, as respects the area of a local education authority being the council of a county, be construed as references to a parish.

39 & 40 Vict. c. 79.
53 & 54 Vict. c. 22.

(2.) References to the school fund or local rate shall be construed as references to the fund or rate out of which the expenses of the local education authority are payable.

(3.) In section thirty-eight of the Elementary Education Act, 1876, references to members of a school board shall be construed as references to members of the education committee, or of any sub-committee appointed by that committee for school attendance purposes.

(4.) The power of making byelaws shall (where the local education authority is a county council) include a power of making different byelaws for different parts of the area of the authority.

54 & 55 Vict. c. 56.

(5.) The following provision shall have effect in lieu of section five of the Elementary Education Act, 1891:

"The duty of a local education authority under the Education Acts, 1870 to 1902, to provide a sufficient amount of public school accommodation shall include the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area."

33 & 34 Vict. c. 75.

(6.) The words "in the opinion of the Board of Education" shall be substituted for the words "in their opinion" in the first paragraph of section eighteen of the Elementary Education Act, 1870.

(7.) Section ninety-nine of the Elementary Education Act, 1870, shall apply to the fulfilment of any conditions, the performance of any duties, and the exercise of any powers under this Act as it applies to the fulfilment of conditions required in pursuance of that Act to be fulfilled in order to obtain a parliamentary grant.

36 & 37 Vict. c. 86.

(8.) A reference to the provisions of this Act as to borrowing shall be substituted in section fifteen of the Elementary Education Act, 1876, for the reference to section ten of the Elementary Education Act, 1873, and a reference to the Local Government Board shall be substituted for the second reference in that section to the Education Department, and also for the reference to the Education Department in section five of the Elementary Education (Blind and Deaf Children) Act, 1893.

56 & 57 Vict. c. 42.

(9.) A reference to the provisions of this Act relating to the enforcement of the performance of the local education authority's duties by mandamus shall be substituted in section two of the Elementary Education Act, 1880, for the reference to section twenty-seven of the Elementary Education Act, 1876. 43 & 44 Vict. c. 23. 39 & 40 Vict. c. 79.

(10.) The substitutions for school boards, school districts, school fund, and local rate made by this schedule shall, unless the context otherwise requires, be made in any enactment referring to or applying the Elementary Education Acts, 1870 to 1900, or any of them, so far as the reference or application extends.

(11.) References in any enactment or in any provision of a scheme made under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, or the Elementary Education Acts, 1870 to 1900, to any provisions of the Technical Instruction Acts, 1889 and 1891, or either of those Acts shall, unless the context otherwise requires, be construed as references to the provisions of Part II. of this Act, and the provisions of this Act shall apply with respect to any school, college, or hostel established, and to any obligation incurred, under the Technical Instruction Acts, 1889 and 1891, as if the school, college, or hostel had been established or the obligation incurred under Part II. of this Act. 52 & 53 Vict. c. 76. 54 & 55 Vict. c. 4.

(12.) The Local Government Board may, after consultation with the Board of Education, by order make such adaptations in the provisions of any local Act (including any Act to confirm a Provisional Order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them to be necessary to make those provisions conform with the provisions of this Act, and may also in like manner, on the application of any council who have power as to education under this Act and have also powers as to education under any local Act, make such modifications in the local Act as will enable the powers under that Act to be exercised as if they were powers under this Act. 45 & 46 Vict. c. 50.

Any order made under this provision shall operate as if enacted in this Act.

FOURTH SCHEDULE.

Section 25.

Enactments Repealed.

Part I.

Session and Chapter.	Short Title.	Extent of Repeal.
52 & 53 Vict. c. 76.	The Technical Instruction Act, 1889.	The whole Act.
53 & 54 Vict. c. 60.	The Local Taxation (Customs and Excise) Act, 1890.	In section one, subsections two and three.
54 & 55 Vict. c. 4.	The Technical Instruction Act, 1891.	The whole Act

Schedule 4, Part II. FOURTH SCHEDULE—*contd.*

PART II.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section four; section five except so far as it defines public school accommodation; section six; sections eight to thirteen; sections fifteen and sixteen; section eighteen from "If at any time" to the end of the section; in section nineteen the words "whether in obedience to any requisition or not"; sections twenty-nine to thirty-four; in section thirty-five the words "a clerk and a treasurer and other" and the words from "but no such appointment" to "member of the board"; sections forty to forty-eight; sections forty-nine to fifty-one; in section fifty-two the words "under the provisions of this Act with respect to the appointment of a body of managers"; sections fifty-three to fifty-six; sections sixty to sixty-six; in section sixty-nine the words "in the metropolis" and the words from "appointed under this Act" to "returns under this Act"; in section seventy-three the words "of the school district," the words from "(if any) or if" to "inquiry relates," and the words "or if there is no school board as a debt due from the rating authority"; sections seventy-seven and seventy-nine; sections eighty-seven, eighty-eight, and ninety; section ninety-three; the first proviso of section ninety-seven; the First Schedule; the Second Schedule, except the Third Part; the Third Schedule.
36 & 37 Vict. c. 86.	The Elementary Education Act, 1873.	Sections five to twelve; sections seventeen and eighteen; sections twenty-one and twenty-six; the First Schedule; the Second Schedule; the Third Schedule.
37 & 38 Vict. c. 90.	The Elementary Education (Orders) Act, 1874.	The whole Act.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	Section seven, from "and (2) in every" to "appointing the committee," and the words "and school attendance committee"; in section fifteen the words "not exceeding fifty"; section twenty-one; section twenty-three to "or pay any fees"; section twenty-seven; in section twenty-eight, the words "but subject in the case of a school attendance committee to the approval herein-after mentioned" and the words "or the officers of the council or guardians by

Fourth Schedule—*contd.* Schedule 4, Part II.

Session and Chapter.	Short Title.	Extent of Repeal.
39 & 40 Vict. c. 79—*contd.*	The Elementary Education Act, 1876—*contd.*	whom the committee are appointed"; sections thirty, thirty-one, thirty-two, thirty-three (except as applied by this Act), and thirty-four; section thirty-six; in section thirty-seven the words "or local authority"; in section thirty-eight the words "or local authority" and "or school attendance committee"; sections forty-one, forty-two, forty-three, and forty-four; section forty-nine; the Second Schedule; the Third Schedule.
43 & 44 Vict. c. 23.	The Elementary Education Act, 1880.	Section three.
53 & 54 Vict. c. 22.	The Education Code (1890) Act, 1890.	Section one.
54 & 55 Vict. c. 56.	The Elementary Education Act, 1891.	Sections five, six, and seven.
56 & 57 Vict. c. 42.	The Elementary Education (Blind and Deaf Children) Act, 1893.	Section four from "(*b*) for an area" to the end of the section. Subsections (3) and (4) of section five. Section six.
59 & 60 Vict. c. 16.	The Agricultural Rates Act, 1896.	In section seven, the words "a school board for a school district which is a parish or," and subsection (3).
60 & 61 Vict. c. 5.	The Voluntary Schools Act, 1897.	Section one.
60 & 61 Vict. c. 16.	The Elementary Education Act, 1897.	The whole Act
62 & 63 Vict. c. 32.	The Elementary Education (Defective and Epileptic Children) Act, 1899.	In section six the proviso.
63 & 64 Vict. c. 53.	The Elementary Education Act, 1900.	Section three.

MEMORANDUM ON EDUCATION COMMITTEES.

Memorandum.

The following Memorandum on Education Committees, under the Education Act, 1902, has been issued by the Board of Education :—

Various applications have been made to the Board of Education for suggestions with respect to the constitution of Education Committees and the framing of schemes for the purpose.

The details of any scheme must be settled by the councils by whom the schemes are made. But with a view to assisting councils who have not as yet framed schemes for themselves and desire assistance, the Board made the following suggestions as to the main matters which should be provided for by the scheme.

1. The heading of the scheme should be—

*County Education Committee,

or

*Borough Education Committee,

or

*Urban District Education Committee.

Proposed Scheme for the Constitution of an Education Committee under the Education Act, 1902.

2. The following clause contains suggestions for the constitution of the Committee, all or any of which can be adopted, as circumstances require :—

The Education Committee (hereinafter called the Committee) shall, when complete, consist of members, including persons of experience in education, and persons acquainted with the needs of the various kinds of schools in the , appointed by the council (hereinafter called the council), being :—

† Members of the council ;

† *Ex-officio* members (*e.g.*, the chairman or vice-chairman of the council) ;

† Nominated members, one nominated by each of the following bodies, *e.g.* :—

The council of the University of ;

† Recommended members, one ‡ recommended by each of the following bodies, *e.g.* :—

The Chamber of Commerce of

The Agricultural Society of

The Association of

The Governing Body of the

An electing body consisting of ;

* Here insert the name of the area for which the committee is appointed.

† Here insert number (if any).

‡ It may often be found convenient to define the mode in which the members are to be recommended, and to insert after "one" some such phrase as the following :— "selected by the council from not less than two nor more than four persons."

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*Members appointed after consultation with :—
The
*Selected members, of whom at least shall be women.
The following interests :—
University education ;
The secondary education of boys and girls in its higher and lower grades ;
Technical instruction and commercial and industrial education, having special regard to the industries of the ;
The training of teachers ;
Elementary education in council schools and in voluntary schools ; shall always be represented either among the members appointed from the council or among members appointed from outside the council.

In the event of any of the nominating or recommending bodies ceasing to exist, the county council shall substitute such other body as in their opinion is of the same character or represents the same interests as the body which has ceased to exist.

3. It will possibly be advisable to make it clear whether a member of the council is to be eligible as a nominated or recommended member of the Committee, or whether it is necessary for a nominated or recommended member to be a member of the nominating or recommending body. The following paragraphs, each drawn in an alternative form, are suggested for the purpose of making this clear ; they could be added to the foregoing clause :—

(1) A / No } member of the council shall be eligible as a nominated or recommended member of the Committee.

(2) A nominated or recommended member must / need not } be a member of the nominating or recommending body.

4. Some provision should be made with respect to the term of office of the members of the Committee.

Members of the council who are appointed *as such* will necessarily go out of office if they cease to be members of the council. The term of office of such a member should, therefore, unless a shorter term is fixed, be made coincident with his ordinary term of office as a councillor.

It will, however, be noticed that in boroughs, and in urban districts where the members retire by rotation, and not simultaneously, it will be very difficult to formulate any plan in practice which provides for the simultaneous retirement of all members of the Committee, and also provides for the term of office of a councillor as a member of the Committee being coincident with his term of office as a member of the council.

As regards outside members it may be convenient that their term of office should, in counties, and in urban districts where the members retire simultaneously, expire at the same time as the term of office of members of the Committee who are members of the council. On the other hand, this is not at all necessary, and, from the point of view of continuity of policy, may be inadvisable.

If simultaneous retirement is not adopted, the term of office for

* Here insert number (if any).

Memorandum.

outside members can be fixed without regard to the term of office of members of the Committee who are members of the council, and, if necessary, different terms of office may be fixed for different classes of outside members.

There is also another alternative, namely, to leave the term of office of members of the Committee to the discretion of the appointing council.

To meet these various cases the following alternative clauses are suggested :—

The term of office of members of the Committee shall be years, except that the first members, instead of being appointed for years, shall be appointed each for a term of office ending on the next ordinary day of retirement of councillors.*

Or,

The term of office of members of the Committee who are members of the council appointed by the council as such, shall be the same as their term of office as members of the appointing council.†

The term of office in the case of members of the Committee not appointed by the council as members of the council shall be—

(*a*) in the case of nominated members, years ;

(*b*) in the case of recommended members, years ;

and so on :

Or,

The term of office of each member of the Education Committee shall be such as may be determined in each case by the council appointing the Committee.

5. A provision limiting the term of office of members appointed to fill casual vacancies will not be required, except in cases where the whole Committee go out of office together, or where regular rotation is provided for. If any such provision is required, it might be in the following form :—

Members appointed to fill casual vacancies shall be appointed only for the remainder of the term of office of the outgoing member, and subject to the same provisions as regulated the appointment of that member.

6. It is possible that in some cases the scheme will provide for one of the nominated or recommended persons being elected by some body of persons with no machinery available for the purpose, *e.g.*, by the headmasters of secondary schools in the area, or by the teachers in elementary schools in the area, or by the managers of a large number of schools. If this is the case, it will be well to provide for the mode in which the election is to take place (*e.g.*, by voting papers or by calling a meeting), and for the determination of the persons who are qualified to elect. But this is a matter which may, of course, be left to the council appointing the Committee ; at any rate, power should be given to the council to alter any regulations laid down with regard to this matter in the scheme.

* It will be found that a provision of this sort is practically only applicable in counties, and in urban districts, where the members retire simultaneously.

† Possibly some shorter term may be desirable in the case of aldermen.

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If it is necessary to make provision on this subject the following clause is suggested :—

" The person to be nominated or recommended as a member of the Committee by an electing body consisting of shall be elected in accordance with regulations framed from time to time by the council for the purpose, or [in accordance with the regulations contained in the schedule to this scheme ; but those regulations shall be subject to alteration by the council from time to time]."

If it is decided that the regulations should be attached to the scheme, the Board of Education will be glad, if desired, to suggest a form of regulations.

7. It will probably be found advisable to make some provision as to the determination of office of members (not being members of the council who are appointed as such) in addition to that made by the Act as respects disqualification. A clause could easily be framed for the purpose on the lines of Section 46 of the Local Government Act, 1894, or the following clause could be adopted :—

Any member who is incapacitated from acting, or who communicates in writing to the Committee a wish to resign, or who is absent from all meetings of the Committee during a period of months (except for some reason approved by the Committee), or who being, when appointed, a member of the council ceases to be a member of the council, shall thereupon cease to be a member of the Committee.

8. The foregoing provision seems to be all the provisions which are required in an ordinary scheme.

All matters relating to the proceedings of the Committee are matters which are more properly determined by the appointing council under paragraph (1) of the First Schedule to the Act than determined by the scheme.

The powers to be exercised, and the duties to be performed, by the council, so far as they are not regulated by the Act, are also matters which should be regulated by the council from time to time and should not be included in the scheme.

The same remark applies with even greater force to any provision in the scheme as to the delegation of powers.

It will no doubt be found in future most convenient that all the provisions relating to the constitution, duties, and proceedings of the Committee should be collected in one document for the use of the Committee.

It will, therefore, be very useful if the council, after the Committee have got into working order, could print under one cover :—

(1) The scheme for the constitution of the Committee ; and

(2) The provisions of the Act specially affecting the Education Committee, *e.g.*, Section 17 (2) and (4) and Schedule I., A. (1)—(6) ; and

(3) Any standing orders or regulations made by the County Council under Schedule I., A., paragraph (1).

Robert L. Morant.

February 9, 1903.

THE COUNTY COUNCILS (BILLS IN PARLIAMENT) ACT, 1903.

(3 EDW. 7, c. 9.)

An Act to empower County Councils to promote Bills in Parliament.

[21st July, 1903.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to county council to promote Bills in Parliament. 51 & 52 Vict. c. 41.

1.—(1) The powers conferred by section fifteen of the Local Government Act, 1888, on the council of a county to oppose Bills in Parliament shall be extended so as to authorise them to promote Bills as well as to oppose them.

(2) The county council may determine that any expenses incurred in pursuance of section fifteen of the Local Government Act, 1888, as amended by this Act, are to be regarded as incurred for special county purposes, but any such determination shall be forthwith notified to the overseers of any parish liable to be assessed in pursuance of such determination, and shall be subject to appeal, within twenty-one days, at the instance of the overseers of any parish so liable, to the Local Government Board, whose decision shall be final.

(3) For the purpose of deciding any such appeal, subsections (1) and (5) of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply.

(4) The powers conferred by this section shall be in addition to, and not in derogation of, any powers possessed by the London County Council.

(5) Proviso (b) to section fifteen of the Local Government Act, 1888, which relates to the promotion of Bills in Parliament by a county council, is hereby repealed.

See s. 15 of the Local Government Act, 1888, and the note thereto, *ante*, p. 418.

* * * * *

Short title and commencement.

3.—(1) This Act may be cited as the County Councils (Bills in Parliament) Act, 1903.

(2) It shall come into operation on the first day of October nineteen hundred and three.

THE EDUCATION (PROVISION OF WORKING BALANCES) ACT, 1903.

(3 Edw. 7, c. 10.)

An Act to provide for the borrowing by Local Education Authorities for certain purposes. [21st July, 1903.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Provision of working balance by borrowing. 2 Edw. 7, c. 42.

1. A local education authority may, with the consent or sanction of the Local Government Board, borrow under section nineteen of the Education Act, 1902, or in such other manner as that Board may approve, such sums as in the opinion of that Board are required to provide a working balance for carrying that Act into effect, and the consent or sanction or approval so given shall be conclusive as to the power of the local education authority to borrow.

See s. 19 of the Education Act, 1902, *ante*, p. 609.

Short title.

2. This Act may be cited as the Education (Provision of Working Balances) Act, 1903.

THE BOROUGH FUNDS ACT, 1903.

(3 EDW. 7, c. 14.)

An Act to amend the Borough Funds Act, 1872. [11th August, 1903.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Expense of promoting Bills. 35 & 36 Vict. c. 91.

1. No expense in relation to the promotion of a Bill in Parliament shall be charged by the council of a borough or urban district under the Borough Funds Act, 1872, unless the requirements contained in the First Schedule to this Act have been observed.

The Borough Funds Act, 1872, is printed, *ante*, p. 282.

The effect of this provision is to substitute the consent of the parochial electors to the promotion of a bill for that of the owners and ratepayers which was formerly required by s. 4 of the Borough Funds Act, 1872, *ante*, p. 283. No such consent is now required in respect of the expense of opposing a bill. See s. 7, *post*.

The requirements of this Act with respect to the consent of the parochial electors do not apply to the expenses incurred by a county council in promoting or opposing bills. See the note to s. 4 of the Borough Funds Act, 1872, *ante*.

Withdrawal of Bill, or part, in case of adverse poll.

2.—(1.) If the result of a poll under this Act, or the decision of a meeting of electors when final, is against the promotion of the Bill, or of a part or parts, or clause or clauses, of the Bill, the council shall forthwith take all necessary steps to withdraw the Bill, or the part or parts, or clause or clauses (as the case may be), against which the poll has resulted or the decision of the meeting has been given.

(2.) In the case of equality of votes on any question of promotion, that question shall be deemed to be decided against the promotion.

Expenses when Bill is withdrawn.

3. Where a Bill, or a part or parts, or clause or clauses, of a Bill, is or are withdrawn, no further expense shall be incurred by the council, or mayor or chairman, in or about the promotion of the Bill, or part or parts, or clause or clauses, so withdrawn, but, subject as aforesaid, all costs, charges, and expenses incurred by the council, or mayor or chairman, in or as incidental to the preparation and promotion of the Bill up to and inclusive of its deposit in Parliament and withdrawal (if withdrawn), and in or as incidental to the holding of a meeting or the taking of a poll under this Act, shall, when taxed by a taxing officer of one of the Houses of Parliament, and allowed under the Borough Funds Act, 1872, be charged on and payable out of such one or more of the public funds or rates under the control of the council (and, if more than one, then in such proportions) as the council, having regard to the nature and objects of the Bill, may determine to be just and proper.

35 & 36 Vict. c. 91.

Section 4.

Saving for special Acts.

4. Nothing in this Act shall extend or be construed to alter or affect any special provision in any local Act for the payment of the costs, charges, and expenses in relation to the promotion by any council of a Bill in Parliament, or to take away or diminish any rights or powers now possessed or enjoyed by any council, or which are or shall be vested in or exerciseable by the inhabitants of the district of any council under any general or special Act, but the council may, if they think fit, adopt with respect to the promotion of any Bill the procedure provided by this Act in lieu of that provided by their local Act.

Offences in relation to polls.

5.—(1.) Any person who at, or for the purposes of, a poll under this Act—

(i.) fraudulently signs or forges any signature to a requisition of electors under this Act; or

(ii.) applies for a voting paper in the name of some other person, whether that name be the name of a person living or dead, or of a fictitious person; or

(iii.) having voted once, applies for a second voting paper in his own name; or

(iv.) forges or counterfeits, or fraudulently defaces or fraudulently destroys any voting paper; or

(v.) without due authority supplies a voting paper to any person; or

(vi.) fraudulently puts into any box or other receptacle any paper other than a voting paper supplied to him for the purpose; or

(vii.) fraudulently takes out of the polling station any voting paper; or

(viii.) without due authority destroys, takes, opens, or otherwise interferes with any box or other receptacle for voting papers or any voting papers then in use; or

(ix.) causes any disturbance or disorder in or near any polling station;

shall be liable on summary conviction to a fine not exceeding twenty pounds.

(2.) An attempt to commit any offence specified in this section shall be punishable in the manner in which the offence is punishable.

Non-compliance with procedure.

6. The failure to comply with the requirements of this Act as to notices or the time within which anything is to be done, or the procedure at a meeting of electors or the mode of taking a poll, shall not render invalid the charge under the Borough Funds Act, 1872, or this Act of any expenses in relation to the promotion of a Bill, if the provisions of this Act have been substantially complied with and the failure has not affected the result of the proceedings under this Act.

Expenses of opposing Bills.

7.—(1.) The provision contained in section four of the Borough Funds Act, 1872, that no expense in opposing a Bill in Parliament shall be charged unless the opposition has had the consent of the owners and ratepayers of the district, shall cease to apply.

See the note to s. 4 of the Borough Funds Act, 1872, *ante*, p. 284.

54 Vict. c. 12.

(2.) In section one of the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891, references to the Borough Funds Act shall be construed and have effect as references to the Borough Funds Act, 1872, as amended by this Act.

Section 8.

Transfer to Local Government Board of certain powers of Secretary of State.

8. The powers conferred upon the Secretary of State by the Borough Funds Act, 1872, or by virtue of any extension or application of that Act, shall be transferred to and exercised by the Local Government Board.

Definitions.

9. For the purposes of this Act, the expression "council" includes the council of every borough and of every urban district, the expression "borough" includes a metropolitan borough, and the expression "electors" means the parochial electors for the time being enrolled in the register of parochial electors in force for the parishes in a borough or urban district, and the expression "the mayor or chairman" means the mayor of the borough or the chairman of the urban district council.

Repeals.

10. The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Extent of Act.

11. This Act shall not extend to Scotland or Ireland.

Short title and commencement.

12.—(1.) This Act may be cited as the Borough Funds Act, 1903, and the Borough Funds Act, 1872, and this Act may be cited together as the Borough Funds Acts, 1872 and 1903.

(2.) This Act shall come into operation on the first day of October nineteen hundred and three.

SCHEDULES.

FIRST SCHEDULE.

REGULATIONS FOR MEETING AND POLLING OF ELECTORS.

35 & 36 Vict. c. 91.

(1.) Where the council of a borough or urban district have resolved, in accordance with the provisions of the Borough Funds Act, 1872, to promote a Bill in Parliament, and the Bill has been deposited, notice shall be given by placards and by advertisement in some local newspaper circulating in the borough or district in two successive weeks stating—

(a) the title of the Bill; and

(b) a brief statement of the objects of the Bill;

(c) that the Bill has been deposited, and the date on which it was first deposited in either House; and

d) that copies of the Bill may be inspected and purchased at a place within the borough or district specified in the notice, between the hours of ten in the forenoon and five in the afternoon, on every week day for fourteen days after the date of the first advertisement, and that extracts may be taken free of charge; and

(e) That a public meeting of electors will be held on a day named, not being less than fourteen nor more than twenty-eight days after the first advertisement of the notice, for the purpose of considering the question of the promotion of the Bill, and indicating the resolutions which will be submitted to the meeting.

(2.) The first advertisement under these regulations must be made within seven days from the first deposit of the Bill in either House, and the placards giving notice under these regulations must be posted within the same time.

(3.) A public meeting of electors shall be held in accordance with the notice, and the mayor or chairman, or, in the event of his being unable or unwilling to preside, any person appointed by the council to perform that duty, shall be president of the

meeting; but, if neither the mayor or chairman, nor the person so appointed, is present within ten minutes after the time appointed for the meeting, the meeting shall choose an elector present at the meeting to be president of the meeting.

See the definitions of "electors" and "mayor or chairman" in s. 9 of this Act.

(4.) The president of the meeting may, with the consent of the majority of the electors present, adjourn the meeting for not more than seven days.

(5.) On opening any such meeting the president of the meeting, or a member or officer of the council, shall give such explanation of the Bill with reference to which the meeting is held as he thinks expedient.

(6.)—(a) The question of the promotion of the Bill shall be put by the president to the meeting either by a single resolution in favour of the promotion of the whole Bill, or by separate resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill, but together covering the promotion of the whole Bill, and the meeting shall decide for or against any such resolution.

(b) The president shall explain to the meeting the resolution or resolutions he proposes to put to the meeting, and the question of the promotion of the Bill shall be put in the manner proposed;

Provided that, if, before any such resolution is put, the meeting decide to request the president to put separately any resolution or resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill not proposed by him to be put separately, he shall put such further or other resolution or resolutions to the meeting as will, consistently with the provisions of this schedule, give effect to that request.

(7.) Unless a poll is required in manner provided by this schedule, with respect to any resolution for promotion put to the meeting, the decision of the meeting on that resolution, as declared by the president of the meeting, shall be final.

(8.) A poll may be required with respect to any such resolution by not less than one hundred electors, or one-twentieth in number of the electors, whichever may be the less, and, if the decision of the meeting on the resolution is against the resolution, by the council.

(9.) A requisition for a poll by electors must be in writing signed by the persons making it, and must be delivered to the mayor or chairman within seven days after the date of the meeting, or any adjournment thereof.

(10.) A requisition for a poll by the council must be authorised by a resolution of the council, and a copy of the resolution must be delivered to the mayor or chairman within seven days after the meeting or any adjournment thereof. Provided that, if the regulations governing the meetings of the council do not permit of an ordinary meeting of the council being held within the said seven days, the time for the delivery of a copy of the resolution shall be within three days after the date on which an ordinary meeting of the council can first be held subsequently to the date of the meeting of the electors or any adjournment thereof.

(11.) The mayor or chairman shall proceed to take the opinion by poll of the electors on the resolution to which any requisition relates, unless a poll is rendered unnecessary by the withdrawal of the requisition for a poll or by a resolution of the council withdrawing the Bill, or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates.

As to the withdrawal of a requisition for a poll, see *R.* v. *Dover Corporation*, [1903] 1 K. B. 668; 72 L. J. K. B. 210; 67 J. P. 81; 1 L. G. R. 266; 19 T. L. R. 255. That case, however, was decided under the repealed provisions relating to a resolution of owners and ratepayers.

(12.) The polls on any number of resolutions may be taken at the same time and by means of the same voting paper.

(13.) The mayor or chairman shall count, or cause to be counted, the votes given at a poll under this schedule, and shall as soon as practicable declare the result.

(14.) The decision of the mayor or chairman on any question arising in respect of any voting paper shall be final.

(15.) Where the mayor or chairman is unable or unwilling to perform any duty or do any act or thing with respect to a poll under this schedule, the council shall appoint some other person to perform the duty or do such act or thing.

Schedule 1.

(16.) Subject to the provisions of this schedule the poll shall be taken in accordance with such regulations as may be prescribed by the Local Government Board, and the Local Government Board may prescribe forms for requisitions, voting papers, notices, and other documents under this schedule, and those forms, or forms to the like effect, shall be used.

SECOND SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND.

Session and Chapter.	Short Title.	Extent of Repeal.
35 & 36 Vict. c. 91.	The Borough Funds Act, 1872.	In section four, the words from "Provided further" to the end of the section. In section five, the words "or one of Her Majesty's principal Secretaries of State, as the case may be," and the words "or Secretary of State." In section six, the words "by one of Her Majesty's principal Secretaries of State, or" and the words "as the case may be." In section seven, the words "or one of Her Majesty's principal Secretaries of State." In section eleven the words "or the metropolitan area as defined by the Metropolis Management Act, 1855."

THE EDUCATION (LOCAL AUTHORITY DEFAULT) ACT, 1904.

(4 Edw. 7, c. 18.)

An Act to make provision for the case of default on the part of Local Authorities in the performance of their duties as respects elementary schools.

[15th August, 1904.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Powers of Board of Education on default of local education authority.

1.—(1.) The Board of Education, without prejudice to their right to take any other proceedings, may, if they are satisfied that it is expedient to do so on account of any default of a local authority in the performance of their duties as respects any elementary school,—

(a) make orders for recognising as managers of that school any persons who are acting as managers thereof, and for rendering valid any act, thing, payment, or grant which in the opinion of the Board might otherwise be invalid by reason of the default of the authority, and every such order shall have effect accordingly ; and

(b) if it appears to the Board that the managers of that school have, for the purpose of maintaining and keeping efficient the school, incurred any expenses for which provision should have been made by the local education authority, pay to the managers such amount in respect of these expenses as in the opinion of the Board was properly incurred.

(2.) Any sums paid by the Board of Education under this Act shall be a debt due to the Crown from the local education authority, and, without prejudice to any other remedy, may be deducted from any sums payable to that authority on account of parliamentary grants.

(3.) Any order or payment may be made under this Act as respects matters occurring whether before or after the passing thereof.

See ss. 6 and 7 of the Education Act, 1902, and the notes thereto, *ante*, p. 598.

Construction and short title. 2 Edw. 7, c. 42.

2. This Act shall be construed as one with the Education Act, 1902, and may be cited as the Education (Local Authority Default) Act, 1904.

THE WEIGHTS AND MEASURES ACT, 1904.

(4 EDW. 7, c. 28.)

An Act to amend the Law relating to Weights and Measures.

[15th August, 1904.]

WHEREAS it is expedient to amend the Weights and Measures Acts, 1878 and 1889 :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Weights and Measures Act, 1904.

Construction. 41 & 42 Vict. c. 49. 52 & 53 Vict. c. 21.

2. This Act shall be construed as one with the Weights and Measures Acts, 1878 and 1889, and the Weights and Measures Acts, 1878 to 1897, and this Act may be cited collectively as the Weights and Measures Acts, 1878 to 1904.

Definitions.

3. In this Act, unless the context otherwise requires—

The expression " the Weights and Measures Acts " means the Weights and Measures Acts, 1878 and 1889, and this Act :

The expression " the principal Act " means the Weights and Measures Act, 1878 :

The expression " the Act of 1889 " means the Weights and Measures Act, 1889.

Commencement.

4. This Act shall come into operation on the first day of January one thousand nine hundred and five.

Powers of Board of Trade as to general regulations.

5.—(1.) The Board of Trade may make general regulations (hereinafter referred to as " the Board of Trade regulations") with respect to—

(a) the verification and stamping of weights and measures and weighing and measuring instruments, including the prohibition of stamping in cases where the nature, denomination, material, or principle of construction of the weight, measure, or instrument appears likely to facilitate the perpetration of fraud ; and

(b) the circumstances and conditions under which, and the manner in which, stamps may be obliterated or defaced ; and

(c) the tests to be applied for the purpose of ascertaining the accuracy and efficiency of weights and measures and weighing and measuring instruments ; and

(d) the limits of error to be allowed on verification and to be tolerated on inspection either generally or as respects any trade;

and generally for the guidance of local authorities in the execution and performance of their powers and duties under the Weights and Measures Acts.

(2.) Any such regulations may confer on local authorities power to make special regulations as respects their areas in relation to the inspection of weights and measures and weighing instruments, and to other matters which, having due regard to uniformity of administration, appear to the Board of Trade to be matters which can be better regulated by special regulations.

(3.) The Board of Trade regulations shall as soon as may be after they are made, be laid before Parliament, and shall have effect as if enacted in this Act.

(4.) If any inspector refuses or wilfully neglects to act in compliance with the Board of Trade regulations, he shall be guilty of an offence under section forty-nine of the principal Act.

(5.) As from the date when the Board of Trade regulations first made under this section come into force, the enactments mentioned in Part I. of the schedule to this Act shall be repealed to the extent specified in the third column of that schedule, and any general regulations and byelaws made thereunder shall cease to have effect.

See the notes to ss. 43 and 53 of the Weights and Measures Act, 1878, *ante*, pp. 348, 350, and to s. 9 of the Weights and Measures Act, 1889, *ante*, p. 470.

* * * * *

Powers of Board of Trade to determine question.

7.—(1.) If any difference arises between any inspector of weights and measures and any other person as to the meaning or construction of the Board of Trade regulations, or as to the method of testing or verifying any weight, measure, weighing or measuring instrument, such difference shall, on the request of either party, be determined by the Board of Trade, whose decision shall be final.

(2.) The court before whom any proceedings under the Weights and Measures Acts are being taken shall, at the request of either party, and may, if they think fit to do so, without any such request, refer to the Board of Trade the question of the accuracy or efficiency of any weight, measure, or weighing or measuring instrument, the accuracy or efficiency of which is in dispute, and the decision of the Board of Trade shall be final; and any expenses incurred by the Board of Trade in making any test for the purpose shall be paid by the complainant or defendant as the Court may by order direct.

37 & 38 Vict. c. 40.

(3.) The Board of Trade Arbitrations, &c. Act, 1874, shall apply as if this Act were a special Act within the meaning of the first-mentioned Act.

Qualification for appointment as inspector of weights and measures.

8.—(1.) The Board of Trade shall provide for the holding of examinations for the purpose of ascertaining whether applicants for the post of inspector under a local authority nominated by that authority possess sufficient practical knowledge for the proper performance of the duties of inspectors of weights and measures, and for the grant of certificates to persons who satisfactorily pass such examinations.

Section 8.

(2.) A person shall not be appointed to act as an inspector of weights and measures unless he has obtained such a certificate as aforesaid, and the appointment of any person as inspector made after the commencement of the Act of 1889 but before the commencement of this Act shall, unless before the commencement of this Act he has obtained a certificate under section eleven of the Act of 1889, be null and void.

(3.) If any person not being an inspector duly appointed under the Weights and Measures Acts acts as such inspector, or if any person having been appointed an inspector after the commencement of the Act of 1889 acts as an inspector without having obtained a certificate either under section eleven of that Act or under this section, he shall be liable to a fine not exceeding ten pounds, or in the case of a second or subsequent offence twenty pounds.

(4.) Subsection three of section eleven of the Act of 1889 shall apply to the charging and application of fees in respect of examinations under this section, and subsections one and two of the said section eleven shall be repealed.

See the note to s. 11 of the Weights and Measures Act, 1889, *ante*, p. 471.

Fees for verification and stamping.

9. It shall be lawful for His Majesty, by Order in Council, to specify new fees to be paid in respect of the verification and stamping of weights, measures, and weighing and measuring instruments in substitution for the fees specified in the First Schedule to the Act of 1889, and, as from the date on which the Order in Council comes into operation, the enactment mentioned in Part II. of the Schedule to this Act shall be repealed to the extent specified in the third column to that schedule. Any Order in Council so made may be varied or revoked by a subsequent Order in Council.

See the note to s. 13 of the Weights and Measures Act, 1889, *ante*, p. 471.

* * * * *

Verification and stamping by local inspectors of weights and measures.

12. The provisions of section forty-four of the principal Act shall apply to the verification and stamping, in accordance with the Board of Trade regulations, of weighing instruments used for trade in like manner as they apply to the verification and stamping of weights and measures, and for the purposes of those provisions as so amended any person having his principal place of business within any district shall be deemed to reside in that district, although he in fact is not resident there.

See the section referred to, *ante*, p. 348.

Amendments.

13. * * * * *

(4.) Section seven of the Act of 1889 shall have effect as if before the words "provide for" there were inserted the words "and if so directed by the Board of Trade shall."

(5.) In section thirteen of the Act of 1889 for the words "no discount shall be allowed" there shall be substituted the words "no discount commission or rebate of any kind shall be given nor any allowance made by such inspector or by the local authority for the use of tools premises machinery or instruments or assistance rendered for the purposes of such verification and stamping, except when such verification

and stamping take place on the premises of a glass or earthenware manufacturer, in which case such adequate and reasonable allowance as may be agreed upon by the local authority, with the consent of the Board of Trade, may be made in respect of such use or assistance as aforesaid." Section 13.

See these sections, *ante*, pp. 470, 471.

14. An inspector of weights and measures may, with the consent of the local authority, prosecute before a court of summary jurisdiction or justices any information, complaint, or proceeding arising under the Weights and Measures Acts, or in the discharge of his duties as such inspector. Power for inspectors to prosecute.

See the note to s. 48 of the Weights and Measures Act, 1878, *ante*, p. 349.

* * * * *

16. The definition of "weighing instrument" in section thirty-five of the Act of 1889 shall include a weighing instrument constructed to also calculate and indicate the price in money. Amendment of s. 35 of 52 & 53 Vict. c. 21.

SCHEDULE.

Part I. Section 5.

Enactments Repealed as from the Date when Board of Trade Regulations first made come into Force.

Session and Chapter.	Short Title.	Extent of Repeal.
41 & 42 Vict. c. 49.	The Weights and Measures Act, 1878.	Section thirty. In section forty-three the words "and where they appoint more than one such inspector shall allot to each inspector, subject to any arrangement made for a chief inspector or inspectors, a separate district to be distinguished by some name, number, or mark." Section fifty-three.
52 & 53 Vict. c. 21.	The Weights and Measures Act, 1889.	Section nine.

Part II. Section 9.

Enactment Repealed as from the Date when Order in Council Fixing new Fees comes into Force.

Session and Chapter.	Short Title.	Extent of Repeal.
52 & 53 Vict. c. 21.	The Weights and Measures Act, 1889.	First Schedule.

THE POLICE (SUPERANNUATION) ACT, 1906.

(6 EDW. 7, c. 7.)

An Act to amend the Law relating to the Superannuation of Constables.

[22nd June, 1906.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Pensions to constables continuing to serve after qualification for pension. 53 & 54 Vict. c. 45.

1.—(1.) Where a constable in a police force to which the Police Act, 1890, applies is entitled to retire on a pension without a medical certificate, but continues to serve in the force, the police authority may, if they think fit, direct that he shall be entitled, on retiring at any time thereafter, to receive a pension not less in amount than that to which he would have been entitled if he had retired instead of continuing in the force, and in such case the right to receive on retirement such pension shall not, while the constable continues to serve in the force, be liable to forfeiture, except in the cases in which a pension when granted is liable to forfeiture under section eight of that Act.

(2.) Before giving any such direction, and every year thereafter, the police authority shall cause the constable to be examined by some duly qualified medical practitioner, and, if on any such examination it is found that the constable is not physically fit for further service, the police authority shall not permit him to continue to serve in the force.

(3.) Where such a direction is given, any extra pay which may be granted to the constable in consideration of his continuing to serve after becoming entitled to retire on pension shall not be reckoned in the calculation of the amount of pension or gratuity awarded under the Police Act, 1890, and the Police Act, 1893, and no rateable deductions shall be made from such extra pay under section fifteen of the Police Act, 1890.

56 Vict. c. 10.

The Police Act, 1890, is set out, *ante*, p. 486. That Act only provided for pensions to constables who retired from service. As to the grounds upon which a claim to a pension may be refused, see s. 10 of that Act.

Reckoning of discontinuous service as approved service for pension.

2.—(1.) Where a constable, who has retired without a pension from a police force to which the Police Act, 1890, applies, subsequently rejoins that force after the passing of this Act, or has so rejoined the force before that date, the police authority shall allow him to reckon in his approved service the period of the approved service which he was entitled to reckon at the end of his previous service, if the constable repays to the police authority the amount of any gratuity which may

have been granted to him, or of any rateable deductions from his pay which may have been paid to him, by the police authority in respect of his previous service.

(2.) The repayment shall be effected by means of deductions from pay or otherwise as the police authority may determine, and all sums so repaid shall be carried to the pension fund.

As to the police forces to which the Act of 1890 applies, see s. 33 of that Act, *ante*.

Reckoning of approved service in different forces.

3.—(1.) Where a constable, who has retired without a pension from a police force to which the Police Act, 1890, applies, subsequently joins some other such police force after the passing of this Act or has so joined such other force before that date, the police authority of that other force may, if they think fit, allow him to reckon in his approved service the period of approved service, not being less than three completed years, which he was entitled to reckon at the end of his service in the first-mentioned force if the constable pays to the police authority of that other force the amount of any gratuity which may have been granted to him or of any rateable deduction from his pay which may have been paid to him in respect of his service in the first-mentioned force; but nothing in this provision shall affect a constable's rights under subsection four of section four of the Police Act, 1890; and subsection two of section fifteen of that Act shall not apply.

This subsection is to be read as if two years was substituted for three years as the minimum period of approved service that may be reckoned. 8 Edw. 7, c. 5, s. 2, *post*, p. 653.

(2.) The payments by the constable shall be effected by means of deductions from pay, or otherwise as the police authority may determine, and all sums so paid shall be carried to the pension fund.

Approved service in case of Naval and Army Reservists.

4.—(1.) Where a constable of a police force to which the Police Act, 1890, applies has, in pursuance of a Royal proclamation, been called into actual service as a member of any Royal Naval Reserve force, or been called out for permanent service as a member of the Army Reserve, his period of service under that proclamation may, if the police authority think fit, be reckoned in the computation of approved service.

(2.) Subsection (5) of section four of the Police Act, 1890 (which relates to the computation of approved service of constables who belong to the Army Reserve), shall extend to constables who belong to any Royal Naval Reserve force, with the substitution of "required for training or called into actual service" for "called out for training or for permanent service."

(3.) The Police Reservists Act, 1902, is, as respects England, hereby repealed. 2 Edw. 7, c. 10.

Amendment of 53 & 54 Vict. c. 45, s. 8 as to forfeiture of pensions.

5. After paragraph (d) of section eight of the Police Act, 1890 (which specifies the cases in which a pension or an allowance under that Act becomes liable to be forfeited wholly or in part and permanently or temporarily), there shall be added the following new paragraphs :—

"or—

"(e) if the grantee supplies to any person or publishes in a manner which the police authority consider to be discreditable or

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improper any information of a confidential nature which he may have obtained in the course of his employment in the police; or

"(f) if the grantee solicits, or, without the consent of the police authority, accepts directly or indirectly any testimonial or gift of a pecuniary value on his retirement from the police; or

"(g) if the grantee enters into or continues in any business occupation or employment as a private detective, after being prohibited to do so by the police authority on any reasonable grounds:

Provided that the decision of a police authority other than the Secretary of State as to forfeiture on any of the grounds aforesaid shall be subject to confirmation by the Secretary of State, but such confirmation shall not affect the right of appeal to quarter sessions conferred by section eleven of the Police Act, 1890."

Age of compulsory retirement.

6.—(1.) In a police force to which the Police Act, 1890, applies, retirement shall be compulsory for every constable above the rank of inspector on his attaining sixty-five years of age, except that in special cases the police authority may extend any such constable's service for a further period, in no case exceeding five years, on being satisfied that the constable's retirement at sixty-five would be detrimental to the interests of the police force; but nothing in this section shall be construed as in anywise affecting the retirement of a constable holding a rank above that of inspector before the passing of this Act.

(2.) Where a constable is compelled to retire under this section, and is not entitled without a medical certificate to retire and receive a pension, he shall be entitled to receive such a pension or may be granted such a gratuity as he would have been entitled to receive or as might have been granted to him had he then retired on a medical certificate.

As to the right to a pension or gratuity, see s. 1 of the Police Act, 1890, *ante*.

Amendment of Police Act, 1890, s. 4.

7. In subsection (1) of section four of the Police Act, 1890, after the words "constable belongs" there shall be inserted the words "not exceeding the period of the sickness, misconduct, or neglect of duty, or the period during which he is suspended from duty on account thereof."

Short title.

8. This Act may be cited as the Police (Superannuation) Act, 1906, and this Act may be cited with the Police Acts, 1839 to 1893.

THE JUSTICES OF THE PEACE ACT, 1906.

(6 Edw. 7, c. 16.)

An Act to amend the Law relating to Justices of the Peace.

[4th August, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Abolition of property qualification for county justices.

1. The qualification by estate required in the case of a justice of the peace for any county shall be abolished.

See the note to s. 157 of the Municipal Corporations Act, 1882, *ante*, p. 117.

Residential qualification.

2. A person, if in other respects the law allows of it, may be appointed a justice of the peace for any county, notwithstanding that he does not reside in the county, if he resides within seven miles thereof.

Provision as to the appointment of solicitors to be justices.

3. A solicitor, if otherwise qualified, may be appointed a justice of the peace for any county, but it shall not be lawful for any solicitor being a justice, or any partner of his, to practise directly or indirectly before the justices for that county or any borough within the county.

Power with respect to ex-officio justices.

4. Any person who is a justice of the peace by virtue only of holding or having held any office may be excluded from the exercise of his functions as such justice by the same authority by which other justices can be removed from the commission of the peace.

Interpretation and repeal.

5.—(1) In this Act the expression "county" includes any riding or division of a county.

(2) The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

* * * * *

Short Title.

7. This Act may be cited as the Justices of the Peace Act, 1906.

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Enactments Repealed. Section 5.

Session and Chapter.	Short Title.	Extent of Repeal.
5 Geo. 2, c. 18.	The Justices Qualification Act, 1731.	The whole Act.

Schedule.

ENACTMENTS REPEALED—*contd.*

Session and Chapter.	Short Title.	Extent of Repeal.
18 Geo. 2, c. 20.	The Justices Qualification Act, 1744.	The whole Act.
6 Geo. 4, c. 48.	The Justices of the Peace Small Debt (Scotland) Act, 1825.	Section twenty-seven.
10 Geo. 4, c. 44.	The Metropolitan Police Act, 1829.	In section one the words "although he may not have any such qualification by estate as is required by law in the case of any other person being a justice of the peace for any county."
26 & 27 Vict. c. 97.	The Stipendiary Magistrates Act, 1863.	In section five the words, "although he may not have such qualification by estate as is required by law in the case of other persons being justices of the peace for a county."
34 & 35 Vict. c. 18.	The Justices Qualification Act, 1871.	The whole Act.
38 & 39 Vict. c. 54.	The Justices Qualification Act, 1875.	The whole Act.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	In subsection (2) of section one hundred and fifty-seven the words, "except the oath as to qualification by estate," and in subsection (4) of that section the words, "or have such qualification by estate as is required for a justice of a county."
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	In subsection (5) (b) of section two the words "other than the oath respecting the qualification by estate."
51 & 52 Vict. c. 43.	The County Courts Act, 1888.	In section seventeen the words, "although he may not be qualified in such manner as is required by law in the case of other persons being justices of the peace."
56 & 57 Vict. c. 73.	The Local Government Act, 1894.	In section twenty-two the words, "other than the oath respecting the qualification by estate."
62 & 63 Vict. c. 14.	The London Government Act, 1899.	Paragraph (2) of section twenty-four.

THE RECORDERS, STIPENDIARY MAGISTRATES, AND CLERKS OF THE PEACE ACT, 1906.

(6 Edw. 7, c. 46.)

An Act to make provision as to the appointment of Deputies for Recorders, Stipendiary Magistrates, and Clerks of the Peace, and for the temporary performance of the duties of those officers in case of vacancies.

[21st December, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to appoint deputies and persons to act temporarily in certain offices.

1.—(1.) If at any time it appears to the authority having power to appoint to any office to which this Act applies that the holder of the office is, by reason of illness, absence, or any other cause, incapable of appointing or removing a deputy, the authority may exercise that power on his behalf, and in so doing may assign out of his salary or stipend a suitable remuneration to any deputy so appointed.

(2.) If any office to which this Act applies becomes vacant by death or otherwise, any person who immediately before the vacancy was a duly appointed deputy of the holder of the office, or, if there is no such deputy or no such deputy willing to act, any person appointed for the purpose by the authority having power to appoint to the office may act temporarily in the office until a person is duly appointed to fill the vacancy, and any person while so acting shall be in the same position as respects remuneration and otherwise as if he were the last holder of the office : Provided that the power of a person to act temporarily under this provision shall not extend beyond a period of six months from the occurrence of the vacancy.

(3.) All things required or authorised by law to be done by, to, or before the holder of any office to which this Act applies, may be done by, to, or before any deputy appointed or any person acting temporarily in the office under this Act, as if that deputy or person were the holder of the office.

(4.) In cases where His Majesty has power to appoint to an office, the power to appoint a deputy or person to act temporarily under this Act may be exercised by the Secretary of State, and this Act shall be construed as if the Secretary of State were the authority having power to appoint to the office.

(5.) Where any qualification is required by law in the case of a deputy

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of the holder of any office to which this Act applies, the same qualification shall be required as respects any person appointed to act temporarily in the office under this Act.

(6.) This Act shall apply to the offices of recorder, stipendiary magistrate, and clerk of the peace, but the powers given by this Act shall be in addition to and not in derogation of any similar power existing under subsection (4) of section eighty-three of the Local Government Act, 1888, or otherwise.

51 & 52 Vict. c. 41.

See the notes to ss. 161, 164, and 166 of the Municipal Corporations Act, 1882, *ante*, pp. 120—123.

Section 83 (4) of the Local Government Act, 1888, empowers the standing joint committee to appoint a deputy clerk of the peace.

Short title and repeal.

2.—(1.) This Act may be cited as the Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906.

51 & 52 Vict. c. 23.

(2.) The Recorders, Magistrates, and Clerks of the Peace Act, 1888, is hereby repealed.

THE QUALIFICATION OF WOMEN (COUNTY AND BOROUGH COUNCILS) ACT, 1907.

(7 Edw. 7, c. 33.)

An Act to amend the Law relating to the capacity of Women to be elected and act as Members of County or Borough Councils.

[28th August, 1907.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Provision as to capacity of women to be county or borough councillors or aldermen.

1.—(1.) A woman shall not be disqualified by sex or marriage for being elected or being a councillor or alderman of the council of any county or borough (including a metropolitan borough) :

Provided that a woman if elected as chairman of a county council or mayor of a borough shall not by virtue of holding or having held that office be a justice of the peace.

62 & 63 Vict. c. 14.

(2.) The words " provided that no woman shall be eligible for any such office " in subsection (1) of section two of the London Government Act, 1899, are hereby repealed.

See note (c) to s. 11 of the Municipal Corporations Act, 1882, *ante*, p. 20.

Short title and extent.

2.—(1.) This Act may be cited as the Qualification of Women (County and Borough Councils) Act, 1907.

(2.) This Act shall not extend to Scotland or Ireland.

THE EDUCATION (ADMINISTRATIVE PROVISIONS) ACT, 1907.

(7 EDW. 7, c. 43.)

An Act to make provision for the better administration by the Central and Local Authorities in England and Wales of the enactments relating to Education. [28th August, 1907.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Purchase and appropriation of land. 2 Edw. 7, c. 42.

1.—(1.) A local education authority shall have the same power, exerciseable in the same manner, and subject to the same provisions, for the purchase of land either compulsorily or by agreement for the purposes of Part II. of the Education Act, 1902, as they have under the Education Acts for the purposes of Part III. of that Act, but the powers given by this section shall be in addition to and not in derogation of any other powers for the purpose possessed by the authority.

(2.) A local education authority may—

(i.) appropriate, with the consent of the Board of Education, for the purpose of Part II. of the Education Act, 1902, any land acquired by them for the purposes of Part III. of the Education Act, 1902, or taken over by them under that Act as successors of a school board ; and

(ii.) appropriate, with the consent of the Board of Education, for the purposes of Part III. of the Education Act, 1902, any land acquired by them for the purpose of Part II. of the Education Act, 1902, either under that Act, or for similar purposes under any Act repealed by that Act ; and

(iii.) appropriate, with the consent of and after inquiry by the Local Government Board, for any of the purposes of the Education Acts, any land acquired by them otherwise than in their capacity as local education authority ;

(3.) The council of a non-county borough or urban district may appropriate, with the consent of and after inquiry by the Local Government Board, for the purpose of their power to supply or aid the supply of education other than elementary, any land acquired by them under any other power.

(4.) The appropriation of land by a local education authority or a council under this section shall be subject in any case to any special covenants or agreements affecting the use of the land in their hands.

(5.) Where the capital expenditure in connection with any land

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appropriated under this section or any loan for the purpose of repaying that expenditure or any part of that expenditure or loan has been, or is charged on, or raised within, any special part of the area of the local education authority or council, and the Board of Education or, in the case of land appropriated under this section and not acquired for any of the purposes of the Education Acts, the Local Government Board, are of opinion that the use of the land for the purposes for which it is appropriated will alter the area benefited by the expenditure, the Board of Education, or the Local Government Board, as the case requires, shall order such equitable adjustment in respect thereof to be made as they think right under the circumstances, and the local education authority or council shall comply with any order so made.

(6.) A council shall have power, with the consent of and after inquiry by the Board of Education, to alienate any land acquired or held by them for the purposes of education other than elementary under Part II. of the Education Act, 1902, and, in the case of the sale of any such land, the proceeds of sale shall be applied in such manner as the Local Government Board sanction, towards the discharge of any loan of the council under the Education Acts, or otherwise for any purpose for which capital may be applied by the council under those Acts.

See ss. 2 and 3 of the Education Act, 1902, and the notes thereto, *ante*, p. 595.

* * * * *

Extension of period for repayment of money borrowed by county council.

3. In the application of section sixty-nine of the Local Government Act, 1888, to money borrowed after the passing of this Act under the Education Acts by the council of a county, a period not exceeding sixty years shall be substituted for a period not exceeding thirty years as the maximum period within which borrowed money is to be repaid, and any money reborrowed for the purpose of discharging a loan raised for the purposes of the Education Acts may, if the Local Government Board approve, and subject to such conditions as they impose, be repaid within such period, not exceeding sixty years from the date of the original loan, as the Local Government Board fix.

51 & 52 Vict. c. 41.

Power of county council to contribute towards capital expenditure incurred by non-county boroughs or urban districts within their county for the purposes of higher education.

4.—(1.) In the exercise of their powers and duties under section two of the Education Act, 1902, a county council shall have power and at all times since the commencement of that Act shall be deemed to have had power to agree with the council of any non-county borough or urban district within their area for the payment to that last-mentioned council of a contribution towards the capital expenditure incurred by them in respect of education other than elementary to such an amount and in such instalments and for such period and subject to such conditions as may be specified in the agreement.

(2.) Where any such agreement is made the contribution agreed to be paid by the county council shall, for the purposes of section nineteen of the Education Act, 1902, form part of the security on which money may be borrowed by the council of the non-county borough or urban district under that section.

Decision of questions as to capital expenditure.

5. If the Local Government Board by order declare that expenses incurred for particular purposes specified in the order may or may not be properly treated under section eighteen of the Education Act, 1902,

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as expenses incurred in respect of capital expenditure, no question shall be raised on audit as to the treatment of expenses incurred for those particular purposes if they are treated in accordance with the order.

Audit of accounts of joint educational bodies. 33 & 34 Vict. c. 75.

6. Where any receipts or payments of money under the Education Acts are entrusted to any joint education committee established under section seventeen of the Education Act, 1902, or to any joint body established under section fifty-two of the Elementary Education Act, 1870, or otherwise established by two or more local authorities, the accounts of those receipts and payments shall, unless in any case the Local Government Board direct to the contrary, or any provisions to the contrary which have been approved by the Local Government Board are contained in the scheme or instrument establishing the committee or body, be audited as if the joint committee or body were a separate local education authority, and the enactments relating to the audit of the accounts of local education authorities (including the penal provisions of those enactments) shall apply accordingly.

As to the audit of the accounts of a local education authority, see s. 18 (3) of the Education Act, 1902, *ante*.

Power to provide for apportionment of expenses in a scheme constituting a joint education committee.

7. A scheme providing for the constitution of a joint education committee under subsection (5) of section seventeen of the Education Act, 1902, may make provision for the proportions in which any expenditure on matters referred or delegated to that committee is to be borne as between the councils of the counties, boroughs, or urban districts, or parts thereof forming the area for which the joint committee is constituted.

Borrowing from Public Works Loan Commissioners.

8. The Public Works Loan Commissioners may lend to a local education authority any money which that authority are authorised to borrow for the purposes of Part II. of the Education Act, 1902.

Amendment of s. 7 of 56 & 57 Vict. c. 42.

9. The condition that the annual expenses of the maintenance of a school not managed by a school authority are, to the extent of not less than one-third, to be defrayed out of sources other than local rates or moneys provided by Parliament, shall cease to be a condition required for the grant of a certificate under section seven of the Elementary Education (Blind and Deaf Children) Act, 1893, to such a school as a school suitable for providing elementary education for blind or deaf children.

Decision of certain educational questions by Board of Education.

10. If any question arises whether any purpose for which a council wish to exercise any powers under the Education Acts is a purpose of Part II. of the Education Act, 1902, or of Part III. of that Act, that question shall be referred to and determined by the Board of Education, and their decision shall be conclusive on the matter.

As to the power of the High Court to quash a decision of the Board of Education where they have exceeded their jurisdiction, see note (*e*) to s. 7 of the Education Act, 1902, *ante*.

Provisions with respect

11. The powers and duties of a local education authority under Part III. of the Education Act, 1902, shall include a power to aid by

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scholarships or bursaries the instruction in public elementary schools of scholars from the age of twelve up to the limit of age fixed for the provision of instruction in a public elementary school by subsection two of section twenty-two of that Act.

to scholarships, bursaries, &c.

12. It is hereby declared that any power of a council under the Education Act, 1902, to supply or aid the supply of education other than elementary is not confined to the education of persons resident in their area and the words "ordinarily resident in the area of the council," in subsection (2) of section twenty-three of the Education Act, 1902, are hereby repealed.

Higher education powers not confined to persons resident in area.

13.—(1.) The powers and duties of a local education authority under Part III. of the Education Act, 1902, shall include—

Provisions as to vacation schools, health of school children, &c., in elementary schools.

(a) power to provide, for children attending a public elementary school, vacation schools, vacation classes, play-centres, or other means of recreation during their holidays or at such other times as the local education authority may prescribe, in the schoolhouse or in some other suitable place in the vicinity, so far as the local education authority, in the case of a schoolhouse or place not belonging to them, can obtain for the purpose the use of the schoolhouse or place; and

(b) the duty to provide for the medical inspection of children immediately before or at the time of or as soon as possible after their admission to a public elementary school, and on such other occasions as the Board of Education direct, and the power to make such arrangements as may be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in public elementary schools:

Provided that in any exercise of powers under this section, the local education authority may encourage and assist the establishment or continuance of voluntary agencies, and associate with itself representatives of voluntary associations for the purpose.

(2.) This section shall come into operation on the first day of January nineteen hundred and eight.

14.—(1.) * * * * *

(2.) For the purposes of paragraph (c) of subsection one of section eighteen of the Education Act, 1902, the county council may treat any expenses incurred by them in providing means of conveyance for teachers or children attending a public elementary school under subsection one of section twenty-three of the Education Act, 1902, in the same manner as they may treat the capital expenditure mentioned in the said paragraph (c).

15. Every council having powers under Part II. of the Education Act, 1902, shall give to the Board of Education such information with respect to the exercise of those powers as the Board may from time to time require.

Returns by councils having powers under Part II. of the Education Act, 1902.

* * * * *

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Repeal, short title, and construction.

17.—(1.) The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(2.) This Act may be cited as the Education (Administrative Provisions)Act, 1907, and shall be construed as one with the Education Acts, 1870 to 1903, and those Acts and this Act are in this Act referred to as the Education Acts, and may be cited as the Education Acts, 1870 to 1907.

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ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
56 & 57 Vict. c. 42.	The Elementary Education (Blind and Deaf Children) Act, 1893.	The words "to the extent of not less than one-third defrayed out of sources other than local rates or moneys provided by Parliament and are," in paragraph (*b*) of subsection (1) of section seven.
62 & 63 Vict. c. 33.	The Board of Education Act, 1899.	Paragraph (*a*) of section four.
63 & 64 Vict. c. 53.	The Elementary Education Act, 1900.	Section five.
2 Edw. 7, c. 42.	The Education Act, 1902.	The words "ordinarily resident in the area of the council," in subsection two of section twenty-three.

THE POLICE (SUPERANNUATION) ACT, 1908.

(8 Edw. 7, c. 5.)

An Act to amend the Law relating to the Superannuation of the Police.
[1st August, 1908.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Reckoning of service of constable joining after Act. 53 & 54 Vict. c. 45.

1. In reckoning the approved service of a constable who after the passing of this Act joins a police force to which the Police Act, 1890, applies, subsection (4) of section four of the Police Act, 1890, shall be read as if the word " two " was substituted for the word " three."

The Police Act, 1890, is set out, *ante*, p. 486.

Reckoning of approved service of constable joining before Act.

2. In reckoning the approved service of a constable who, before the passing of this Act, has joined a police force to which the Police Act, 1890, applies, subsection (4) of section four of the Police Act, 1890, shall be read as if the word " two " was substituted for the word " three " if but not unless such constable pays to any other police authority, in whose force he may have served and completed not less than two years' approved service, the amount of any rateable deduction from his pay which may have been paid to him in respect of his service in the force of such other police authority.

Reckoning of approved service in different forces. 6 Edw. 7, c. 7.

3. In reckoning the approved service of a constable who has joined a police force to which the Police Act, 1890, applies, before the passing of this Act, or who joins such a force after the passing of this Act, subsection (1) of section three of the Police (Superannuation) Act, 1906, shall be read as if the word " two " was substituted for the word " three."

The Police (Superannuation) Act, 1906, is set out, *ante*, p. 640.

Short title.

4. This Act may be cited as the Police (Superannuation) Act, 1908, and shall be construed as one with the Police Acts, 1839 to 1906, and may be cited with those Acts as the Police Acts, 1839 to 1908.

THE COSTS IN CRIMINAL CASES ACT, 1908.

(8 EDW. 7, c. 15.)

An Act to consolidate and amend the Law relating to the Payment of Costs in Criminal Cases. [1st August, 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Payment of Costs out of Local Funds.

Power of court to direct payment out of local funds of costs of prosecution or defence.

1.—(1.) The following courts, namely,—

(a) a court of assize or a court of quarter sessions before which any indictable offence is prosecuted or tried, and

(b) a court of summary jurisdiction by which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, and

(c) any justice or justices before whom a charge not dealt with summarily is made against any person for an indictable offence (in this Act referred to as the examining justices),

may on any such proceedings by order direct the payment of the costs of the prosecution or defence or both in accordance with the provisions of this Act out of the funds of the county or county borough out of which they are payable under this Act (in this Act referred to as local funds).

(2.) The costs which may be so directed to be paid are such sums as, subject to the regulations of the Secretary of State under this Act, appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and giving of evidence, and the amount of any costs so directed to be paid shall be ascertained as soon as practicable by the proper officer of the court.

3 Edw. 7, c. 38.

(3.) Where it has been certified that a prisoner ought to have legal aid under the Poor Prisoners Defence Act, 1903, the costs which may be directed to be paid under this section shall, subject to the regulations of the Secretary of State under this Act, include the fees of solicitor and counsel, the costs of a copy of the depositions, and any other expenses properly incurred in carrying on the defence.

(4.) No expenses to witnesses, whether for the prosecution or defence,

shall be allowed at a court of assize or quarter sessions before which any indictable offence is prosecuted or tried, if such witnesses are witnesses to character only, unless the court shall otherwise order. Section 1.

2. As soon as the amount due to any person in respect of costs directed by a court of assize or a court of quarter sessions to be paid out of local funds has been ascertained, the proper officer shall make out and deliver to that person, or to any person who appears to the proper officer to be acting on behalf of that person, an order upon the treasurer of the county or borough out of the funds of which the costs are payable under this Act for the payment of that amount. Payment of costs directed to be paid at assizes or quarter sessions.

3.—(1.) As soon as the amount due to any person in respect of costs directed by a court of summary jurisdiction or by examining justices to be paid out of local funds has been ascertained, the proper officer— Payment of costs directed to be paid by court of summary jurisdiction or examining justices.

(a) shall pay to that person the amount due forthwith, if the amount is due for travelling or personal expenses in respect of his attendance to give evidence; and

(b) so far as the amount is not due in respect of attendance to give evidence, shall forward a certificate of the amount in the case of a committal to the proper officer of the court to which the defendant is committed, and in any other case to the clerk of the peace of the county or place for which the court or justices act.

(2.) Any amount so paid by the proper officer to any person in respect of his attendance to give evidence shall be reimbursed to that officer by the treasurer of the county or borough out of the funds of which that sum is payable under this Act, and the treasurer shall be allowed any amount so reimbursed in his account.

(3.) The certificate so forwarded shall be laid in the case of a certificate forwarded to the officer of the court to which the defendant is committed before that court, and in the case of a certificate forwarded to the clerk of the peace before the next court of quarter sessions, and in either case the court shall consider the certificate and cause an order to be made on the treasurer of the county or borough out of the funds of which the amount is payable for the payment of the amount so certified, or of any less amount which the court considers should have been allowed in the circumstances under this Act.

Where a certificate is forwarded to the officer of a court to which a defendant is committed for trial, the officer shall when practicable include the amount payable in respect of the costs so certified in the order for payment of any costs directed to be paid by the court to which the defendant is committed for trial.

4.—(1.) Costs in the case of offences committed or supposed to have been committed in a county borough, whether the court directing the payment is held in the borough or not, are payable under this Act out of the borough fund or borough rate of the county borough, and costs in the case of other offences are payable under this Act out of the county fund of the administrative county in which the offence is committed or is supposed to have been committed. Definition of local funds andprocedure for payment of orders on local funds.

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For the purposes of this provision, offences committed within the jurisdiction of the Admiralty of England shall be deemed to have been committed in the place where the offender is prosecuted or tried, or, where the offender is tried at the Central Criminal Court, in the county of London; but any costs paid in the case of those offences out of the funds of any county or county borough shall be repaid out of moneys provided by Parliament.

See the notes to s. 169 of the Municipal Corporations Act, 1882, and s. 35 (5) of the Local Government Act, 1888, *ante*.

(2.) The treasurer of any county or county borough on whom an order is made for payment of any sum on account of costs under this Act shall, upon sight of the order, pay out of the county fund or borough fund or rate, as the case may be, to the person named therein or his duly authorised agent the sum specified in the order, and shall be allowed the sum in his accounts.

(3.) The council of every county and of every county borough shall cause their treasurer, or some other person on his behalf, to attend at every court of assize or quarter sessions at which any indictable offence in respect of which an order can be made under this Act on the treasurer is to be tried for the purpose of paying any orders so made, and to remain in attendance for that purpose during the sitting of the court, or until such hour as the court shall direct.

(4.) For the purpose of meeting any change in the financial relations between any counties and boroughs which may arise by virtue of the provisions of this Act as to the payment of any costs allowed under this Act, any necessary equitable adjustment may be made by agreement between the councils of the counties or boroughs concerned, or, in default of agreement, by the Local Government Board.

The Board may at their option determine the matter as arbitrators, or otherwise, and, if they elect to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of matters under this subsection.

31 & 32 Vict. c. 119.

For the purpose of this subsection the Local Government Board may hold any local inquiry, and subsections one and five of section eighty-seven of the Local Government Act, 1888, shall apply accordingly.

51 & 52 Vict. c. 41.

As to an adjustment, see the notes to s. 62 of the Local Government Act, 1888, and s. 68 of the Local Government Act, 1894, *ante*.

Power to make regulations as to scales of costs, &c.

5. A Secretary of State may make regulations generally for carrying into effect this Act and in particular with respect to the following matters, namely :—

(a) the rates or scales of payment of any costs which are payable out of local funds under this Act and the conditions under which any such costs may be allowed; and

(b) the manner in which an officer of the court making any payment on account of costs to any person in respect of his attendance to give evidence is to be reimbursed out of local funds; and

(c) the form of orders, certificates, and notices under this Act, and the furnishing of information when certificates are forwarded under this Act by officers of courts of summary jurisdiction or of examining justices. Section 5.

Order for payment of Costs by Defendant or Prosecutor.

Power of court to order payment of costs of prosecution by defendant or of defence by prosecutor.

6.—(1.) The court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction including any proceedings before the examining justices, as taxed by the proper officer of the court.

(2.) Where a person is acquitted on any indictment or information by a private prosecutor for the publication of a defamatory libel, or for any offence against the Corrupt Practices Prevention Act, 1854, or for the offence of any corrupt practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, or on an indictment for an offence under the Merchandise Marks Acts, 1887 to 1894, or on an indictment presented to a grand jury under the Vexatious Indictments Act, 1859, in a case where the person acquitted has not been committed to or detained in custody or bound by recognizance to answer the indictment, the court before which the person acquitted is tried may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the examining justices, as taxed by the proper officer of the court.

17 & 18 Vict. c. 102.
46 & 47 Vict. c. 51.
22 & 23 Vict. c. 17.

See the notes to s. 53 of the Corrupt and Illegal Practices Prevention Act, 1883, *ante*, p. 359, and s. 30 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, *ante*, p. 397.

(3.) Where a charge made against any person for any indictable offence (not dealt with summarily) is dismissed by the examining justices, the justices may, if they are of opinion that the charge was not made in good faith, order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, but if the amount ordered to be paid exceeds twenty-five pounds the prosecutor may appeal against the order to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts, and no proceedings shall be taken upon the order until either the time within which the appeal can be made has elapsed without an appeal being made, or, in case an appeal is made, until the appeal is determined or ceases to be prosecuted.

(4.) An order under this section for the payment of costs by the person convicted or by the prosecutor may be made in addition to an order directing payment of costs out of local funds, and, where an order is made directing payment out of local funds, the costs shall primarily be payable out of local funds in accordance with this Act, but notice of any order under this section for the payment of costs by the person convicted or by the prosecutor shall be sent to the council of the county or borough out of the funds of which they are so payable.

(5.) Any order under this section may be enforced, as to any costs primarily paid out of local funds, by the council of the county or borough

Section 6.

out of the funds of which they have been so paid, and, as to any other costs, by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the court so directs.

Supplemental.

Power as to costs where person committed for trial is not ultimately tried.

7. Where a person has been committed for trial for an indictable offence and is not ultimately tried, the court to which he is committed shall have power to direct or order payment of costs under this Act in the same manner as if the defendant had been tried and acquitted.

Saving.

8. Nothing in this Act shall affect the operation of any enactment for the time being in force which provides for the payment of the costs of the prosecution or defence of an indictable offence out of any assets, money, or fund other than local funds, or by any person other than the prosecutor or defendant.

Interpretation, &c.

9.—(1.) In this Act the expression " indictable offence " includes any offence punishable on summary conviction when that offence is under the Summary Jurisdiction Acts deemed to be as respects the person charged an indictable offence, and the expression " prosecutor " includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on.

(2.) Any reference in this Act to a person committed for trial shall include a reference to a person whom a prosecutor is bound over to prosecute under the Vexatious Indictments Act, 1859, and any reference to the court to which a person is committed shall in such a case be construed as a reference to the court at which the prosecutor is so bound over to prosecute.

(3.) This Act shall not apply in the case of an offence in relation to the non-repair or obstruction of any highway, public bridge, or navigable river, and costs in any such case may be allowed as in civil proceedings as if the prosecutor or defendant were plaintiff or defendant in any such proceedings.

(4.) This Act shall apply in a case of a person committed as an incorrigible rogue under the Vagrancy Act, 1824, as if that person were committed for trial for an indictable offence, and in the case of any appeal under that Act as if the hearing of the appeal by the court of quarter sessions were the trial of an indictable offence.

5 Geo. 4, c. 83.

7 Edw. 7, c. 23.

11 & 12 Vict. c. 78.

(5.) For the purpose of section thirteen of the Criminal Appeal Act, 1907 (which relates to the costs of appeal), the hearing of a case stated under the Crown Cases Act, 1848, shall be deemed to be an appeal, and the person in relation to whose conviction the case is stated shall be deemed to be an appellant, and the provisions of this Act giving power to direct the payment of the costs of the prosecution and defence shall not apply to the hearing of any case so stated.

Section 9.

(6.) A reference to the payment of costs out of local funds under this Act shall be substituted for any reference to the payment of expenses in the case of an indictment for felony, or in cases of felony, or in the case of a misdemeanour under the Criminal Law Act, 1826, or any like reference in section one of the Inebriates Act, 1899, or in section thirteen of the Criminal Appeal Act, 1907, or in any other enactment.

62 & 63 Vict. c. 35.
7 Edw. 7, c. 23.
7 Geo. 4, c. 64.
62 & 63 Vict. c. 35.

10.—(1.) The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Repeal, commencement, short title, and extent.

Provided that, without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals,—

52 & 53 Vict. c. 63.

(a) any regulations made by a Secretary of State under section five of the Criminal Justice Administration Act, 1851, shall continue to have effect as if they had been made under the powers given by this Act; and

14 & 15 Vict. c. 55.

(b) Where, in determining the amount of any fees to be paid to counsel or solicitors or any other matter which may be, but is not at the time of the passing of this Act, regulated by regulations made by the Secretary of State, regard is had under the practice as existing at the time of the passing of this Act to any rates or scales of payment authorised by a court of quarter sessions, those rates and scales of payment shall have effect as if they were contained in regulations made by the Secretary of State under this Act; and

(c) The repeal of any enactment which imposes an obligation to pay a fee to any officer shall not affect the salary paid in lieu of fees to any person who is such an officer at the time of the passing of this Act.

(2.) This Act shall come into operation on the first day of January nineteen hundred and nine.

(3.) This Act may be cited as the Costs in Criminal Cases Act, 1908.

(4.) This Act shall not extend to Scotland or Ireland.

SCHEDULE.

Repeals.

Section 10.

Session and Chapter.	Short Title.	Extent of Repeal.
38 Geo. 3, c. 52.	The Counties of Cities Act, 1798.	The words "the expenses of the prosecution and of the witnesses and of" in section eight.
5 Geo. 4, c. 83.	The Vagrancy Act, 1824.	Section nine, from "and the justices of the peace" to "allowed the same in his account."

Schedule. REPEALS—*contd.*

Session and Chapter.	Short Title.	Extent of Repeal.
7 Geo. 4, c. 64.	The Criminal Law Act, 1826.	Sections twenty-two, twenty-three, twenty-four, and twenty-five.
4 & 5 Will. 4, c. 36.	The Central Criminal Court Act, 1834.	Section twelve.
5 & 6 Will. 4, c. 50.	The Highway Act, 1835.	Section ninety-five, from "and the costs" to "shall be situate" and section ninety-eight.
1 & 2 Vict. c. 82.	The Parkhurst Prison Act, 1838.	Section fourteen, from "and the expenses" to the end of the section.
6 & 7 Vict. c. 96.	The Libel Act, 1843.	Section eight.
11 & 12 Vict. c. 12.	The Treason Felony Act, 1848.	Section ten.
13 & 14 Vict. c. 101.	The Poor Law Amendment Act, 1850.	Section nine, from "and shall" to the end of the section.
14 & 15 Vict. c. 19.	The Prevention of Offences Act, 1851.	Section fourteen.
14 & 15 Vict. c. 55.	The Criminal Justice Administration Act, 1851.	Section two. Section five, from "to prosecutors" to "prosecutions and," and from "and also" to "certificates relate." Section six, from "payment to any prosecutor" to "loss of time, or order," and from "and where" to the end of the section.
17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	Section ten, from the beginning of the section down to "provided always that," and sections twelve and thirteen.
24 & 25 Vict. c. 96.	The Larceny Act, 1861.	Section one hundred and twenty-one.
24 & 25 Vict. c. 97.	The Malicious Damage Act, 1861.	Section seventy-seven.
24 & 25 Vict. c. 98.	The Forgery Act, 1861.	Section fifty-four.
24 & 25 Vict. c. 99.	The Coinage Offences Act, 1861.	Section forty-two.
24 & 25 Vict. c. 100.	The Offences against the Person Act, 1861.	Sections seventy-four, seventy-five, and seventy-seven.
25 & 26 Vict. c. 61.	The Highway Act, 1862.	Section nineteen, from "and the costs" to the end of the section.

Repeals—*contd.* Schedule.

Session and Chapter.	Short Title.	Extent of Repeal.
30 & 31 Vict. c. 35.	The Criminal Law Amendment Act, 1867.	Sections two and five.
32 & 33 Vict. c. 62.	The Debtors Act, 1869.	Section seventeen.
32 & 33 Vict. c. 89.	The Clerks of Assize, &c., Act, 1867.	Sections nine, ten, and eleven.
33 & 34 Vict. c. 23.	The Forfeiture Act, 1870.	Section three.
35 & 36 Vict. c. 33.	The Ballot Act, 1872.	Section twenty-four from "and the costs" to "in cases of felony."
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879.	In subsection (1) of section seventeen, the words "and the expenses of the prosecution shall be payable as in cases of felony." Section twenty-eight except so far as that section is applied by section one of the Inebriates Act, 1899, or any other Act.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	The word "prosecution" in section one hundred and fifty-one, and section one hundred and sixty-nine.
46 & 47 Vict. c. 51.	The Corrupt and Illegal Practices Prevention Act, 1883.	The words "twelve and thirteen" in section fifty-three, and subsection (2) of section fifty-seven.
48 & 49 Vict. c. 69.	The Criminal Law Amendment Act, 1885.	Section eighteen.
50 & 51 Vict. c. 28.	The Merchandise Marks Act, 1887.	Section fourteen.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	The words "and all costs of prosecutions mentioned in section one hundred and sixty-nine of the Municipal Corporations Act, 1882, shall be paid out of the county fund" in subsection (5) of section thirty-five. Section sixty-seven, from "and the county council" to the end of the section. The words "but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes except in the case of persons committed for trial from the borough" in section one hundred.
52 & 53 Vict. c. 52.	The Official Secrets Act, 1889.	Section four.

Schedule. REPEALS—*contd.*

Session and Chapter.	Short Title.	Extent of Repeal.
52 & 53 Vict. c. 69.	The Public Bodies Corrupt Practices Act, 1889.	Section five.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	Section seven hundred and one.
3 Edw. 7, c. 38.	The Poor Prisoners Defence Act, 1903.	Subsection (2) of section one.
4 Edw. 7, c. 15.	The Prevention of Cruelty to Children Act, 1904.	Section twenty.
6 Edw. 7, c. 34.	The Prevention of Corruption Act, 1906.	Subsection (4) of section two.

THE REGISTRATION ACT, 1908.

(8 Edw. 7, c. 21.)

An Act to amend the Law relating to the time for an Appeal from the Decision of a Revising Barrister, and matters consequential thereon.

[1st August, 1908.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Alteration of time for notice of appeal from revising barrister's decision. 6 & 7 Vict. c. 18.

1.—(1.) Any person intending to prosecute an appeal under the Parliamentary Voters Registration Act, 1843, from or in respect of the decision of a revising barrister shall, on or before the twenty-sixth day of October next after the conclusion of the revision, transmit to the Master in the Crown Office the statement made by the revising barrister in pursuance of that Act, and also deliver or send by post a notice signed by him to the respondent in the appeal, stating his intention to prosecute the appeal.

Arrangements shall be made for hearing any such appeals without delay, and, as far as possible, continuously.

(2.) Any such statement made by the revising barrister for the purpose of any such appeal may be made at any time within ten days after the conclusion of the revision, and the statement need not be read in open court, but shall be submitted to the appellant, who, if he approves the same, shall sign the same as directed by section forty-two of the said Act, and return the same to the revising barrister.

See s. 42 of the Parliamentary Voters Registration Act, 1843, and the note thereto, *ante*, p. 225.

Repeal and short title.

2.—(1.) The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Any reference in the Parliamentary Voters Registration Act, 1843, or any other Act, to the notice, time, or mode of appeal under any enactment so repealed shall be construed as a reference to the notice, time, or mode of appeal under this Act.

(2.) This Act may be cited as the Registration Act, 1908, and shall be construed as one with the Registration of Electors Acts, 1843 to 1891, and the Acts amending the same.

Schedule.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
6 & 7 Vict. c. 18.	The Parliamentary Voters Registration Act, 1843.	Sections sixty-two and sixty-three.
51 & 52 Vict. c. 10.	The County Electors Act, 1888.	Subsection (2) of section six.

THE LOCAL AUTHORITIES (ADMISSION OF THE PRESS TO MEETINGS) ACT, 1908.

(8 Edw. 7, c. 43.)

An Act to provide for the Admission of Representatives of the Press to the Meetings of certain Local Authorities.

[21st December, 1908.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Representatives of the press to be admitted to the meetings of a local authority subject to a proviso.

1. Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

See the note to the Municipal Corporations Act, 1882, Schedule 2, r. 9, *ante*, p. 172.

Definitions.

2. For the purposes of this Act the expression "local authority" means—

(a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894. 56 & 57 Vict. c. 73.

(b) An education committee and a joint education committee, established under section seventeen of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval; 2 Edw. 7, c. 42.

(c) A board of guardians, and a joint committee constituted in pursuance of section eight of the Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor; 42 & 43 Vict. c. 54.

Section 2.

5 Edw. 7, c. 18.

(d) A central body and a distress committee under the Unemployed Workmen Act, 1905;

(e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(f) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

Saving for committee meetings.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

Powers of committee.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

Admission of the public.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

* * * * *

Short title and extent.

7.—(1.) This Act may be cited as the Local Authorities (Admission of the Press to Meetings) Act, 1908.

(2.) This Act shall not extend to Ireland.

THE EDUCATION (ADMINISTRATIVE PROVISIONS) ACT, 1909.

(9 Edw. 7, c. 29.)

An Act to make provision for the better administration by Central and Local Authorities in England and Wales of the enactments relating to Education. [25th November, 1909.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Application of 2 Edw. 7, c. 42, s. 17, to powers under other Acts.

1. The provisions of section seventeen of the Education Act, 1902, requiring that all matters relating to the exercise by a local education authority or council having powers under that Act of their powers under that Act shall stand referred to the education committee constituted under that section, and enabling the local education authority or council to delegate to the education committee so constituted any of their powers under that Act, shall apply not only with respect to the powers conferred on the local education authority or council under that Act, but also to any powers connected with education conferred by or under any other Act, scheme, or order, on the authority or council, expressly as a local education authority or as a council having powers under the Education Act, 1902, except the power of raising a rate or borrowing money.

See s. 17 of the Education Act, 1902, *ante*, p. 606.

Accounts of managers of a school provided under Part II. of 2 Edw. 7, c. 42.

2. Where any receipts or payments of money are entrusted by a council having powers under Part II. of the Education Act, 1902, to the managers of any school provided by them for the purpose of supplying education other than elementary, the accounts of those receipts and payments shall be accounts of the council under the Education Act, 1902, but the auditor of those accounts shall have the same power with respect to the managers as he would have if the managers were officers of the council.

Joint action under Part II. of the Education Act, 1902.

3. For the purpose of establishing or maintaining any school or college which any council have power to establish or maintain under Part II. of the Education Act, 1902, the council shall have power and shall be deemed always to have had power to unite with any other council having powers under that Part of that Act, on such terms as to payment, the appointment of a joint body of managers, and otherwise, as may be or may have been agreed between them.

* * * * *

Section 5.

Appropriation to other purposes of land acquired for educational purposes.

5. The council of any county, borough, or urban district may, with the consent of the Board of Education, appropriate any land held by them in their capacity as local education authority for any of the purposes of the council, otherwise than in their capacity as local education authority, approved by the Local Government Board :

Provided that the council shall not on any lands so appropriated—

(a) create or permit any nuisance ; or

(b) sink any well for the public supply of water or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless, after local inquiry and consideration of any objections made by persons affected, the Local Government Board, subject to such conditions as they think fit, authorise the work or construction.

See the notes to ss. 2 and 3 of the Education Act, 1902, *ante*, p. 595.

* * * * *

Short title and construction.

7. This Act may be cited as the Education (Administrative Provisions) Act, 1909, and shall be construed as one with the Education Acts, 1870 to 1907, and those Acts and this Act may be cited together as the Education Acts, 1870 to 1909.

THE OATHS ACT, 1909.

(9 Edw. 7, c. 39.)

An Act to amend the Law as to Oaths. [25th November, 1909.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short Title. 51 & 52 Vict. c. 46.

1. This Act may be cited for all purposes as the Oaths Act, 1909 ; and the Oaths Act, 1888, and this Act may be cited together as the Oaths Acts, 1888 and 1909.

Manner of administration of oaths.

2.—(1.) Any oath may be administered and taken in the form and manner following :—

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words "I swear by Almighty God that . . . . .", followed by the words of the oath prescribed by law.

(2.) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question :

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

The form of oath which is authorised by this Act is not made compulsory if the person to whom the oath is administered objects to it. He is entitled to insist upon being sworn in any manner which was lawful at the time when the Act was passed.

Definition.

3. In this Act the word "officer" shall mean and include any and every person duly authorised to administer oaths.

Commencement and extent.

4.—(1.) This Act shall come into operation on the first day of January nineteen hundred and ten.

(2.) This Act shall not apply to Scotland.

* * * * *

THE POLICE ACT, 1909.

(9 EDW. 7, C. 40.)

An Act to amend the Metropolitan Police Acts, 1829 to 1899, and to make better provision for the widows and children of constables who lose their lives in the execution of their duty. [25th November, 1909.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

* * * * *

Pensions of widows and children of constables killed on duty.

5.—(1.) At the end of paragraph (6) of Part II. of the First Schedule to the Police Act, 1890 (which relates to the pensions and allowances to widows and children of constables in England), the following proviso shall be added :—

" Provided further that, where a constable loses his life from the effects of an injury which is not accidental, the police authorities shall increase the pension to the widow to a sum equal to one-third of the annual pay of the constable, and the allowance to each child to a sum equal to one-fifteenth of such pay, or, if there is no widow, to a sum not less than one-fifteenth nor more than two-fifteenths of such pay, unless the aggregate of such pension and allowances would exceed two-thirds of such pay, in which case they shall be rateably reduced ; the police authority may, however, refuse so to increase the pension to the widow on the ground of her misconduct, but any such refusal shall be subject to confirmation by the Secretary of State."

* * * * *

Short title.

6. This Act may be cited as the Police Act, 1909, and, so far as it amends the Metropolitan Police Acts, 1829 to 1899, may be cited with those Acts as the Metropolitan Police Acts, 1829 to 1909, and, so far as it amends the Police Act, 1890, may be cited with the Police Acts, 1839 to 1908, as the Police Acts, 1839 to 1909, and so far as it amends the Police (Scotland) Act, 1890, may be cited with the Police (Scotland) Acts, 1857 to 1890, as the Police (Scotland) Acts, 1857 to 1909.

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